





# San Francisco Law Library

No. ....

Presented by

.....

\_\_\_\_\_

## EXTRACT FROM BY-LAWS

Section 9. No book shall, at any time, be taken from the Library Room to any other place than to some court room of a Court of Record, State or Federal, in the City of San Francisco, or to the Chambers of a Judge of such Court of Record, and then only upon the accountable receipt of some person entitled to the use of the Library. Every such book so taken from the Library, shall be returned on the same day, and in default of such return the party taking the same shall be suspended from all use and privileges of the Library until the return of the book or full compensation is made therefor to the satisfaction of the Trustees.

Sec. 11. No books shall have the leaves folded down, or be marked, dog-eared, or otherwise soiled, defaced or injured. Any party violating this provision, shall be liable to pay a sum not exceeding the value of the book, or to replace the volume by a new one, at the discretion of the Trustees or Executive Committee, and shall be liable to be suspended from all use of the Library till any order of the Trustees or Executive Committee in the premises shall be fully complied with to the satisfaction of such Trustees or Executive Committee.



















United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

Transcript of Record.  
(IN TWO VOLUMES.)

---

PACIFIC POWER COMPANY, a Corporation,  
Plaintiff in Error,  
vs.  
P. R. SHEAFF,  
Defendant in Error.

---

VOLUME I.  
(Pages 1 to 304, Inclusive.)

---

Upon Writ of Error to the United States District  
Court of the District of Nevada.

---

Filed

JUL 1 - 1915

F. D. Monckton,

Clerk.







United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

Transcript of Record.  
(IN TWO VOLUMES.)

---

PACIFIC POWER COMPANY, a Corporation,  
Plaintiff in Error,  
vs.

P. R. SHEAFF,  
Defendant in Error.

---

VOLUME I.  
(Pages 1 to 304, Inclusive.)

---

Upon Writ of Error to the United States District  
Court of the District of Nevada.

---





# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Admission of Service of Copy of Bill of Exceptions .....	589
Affidavit of Service of Summons.....	10
Answer.....	15
Answer to Writ of Error.....	593
Assignment of Errors.....	38
Assignment of Insufficiency of the Evidence...	87
Bill of Exceptions.....	98
Certificate of Clerk U. S. District Court to Transcript of Record, etc.....	592
Citation on Writ of Error.....	596
Complaint.....	1
Copies of Drawings Made on Board by Counsel as to Splicing of Tendon Achilles.....	368
Demurrer.....	11
Drawing on Blackboard as to Tendon Achilles, Facsimile of.....	354
Drawing Made on the Board (2), Facsimile of..	115
Drawing upon the Board, Facsimile of (1).....	109
Drawings Made on Blackboard by Counsel as to Splicing of Tendon Achilles.....	368



	Index.	Page
Error No. 1.....		224
Error No. 2.....		230
Error No. 3.....		253
Error No. 4.....		256
Error No. 5.....		257
Error No. 6.....		258
Error No. 7.....		259
Error No. 8.....		259
Error No. 9.....		259
Error No. 10.....		260
Error No. 11.....		262
Error No. 12.....		270
Error No. 13.....		271
Error No. 14.....		283
Error No. 15.....		290
Error No. 16.....		291
Error No. 17.....		297
Error No. 18.....		300
Error No. 19.....		304
Error No. 20.....		321
Error No. 21.....		322
Error No. 22.....		340
Error No. 23.....		340
Error No. 24.....		350
Error No. 25.....		351
Error No. 26.....		381
Error No. 27.....		384
Error No. 28.....		390
Error No. 29.....		424
Error No. 30.....		442
Error No. 31.....		461

Index.	Page
Error No. 32.....	464
Error No. 33.....	468
Error No. 34.....	469
Error No. 35.....	471
Error No. 36.....	471
Error No. 37.....	472
Error No. 38.....	484
Error No. 39.....	484
Error No. 40.....	487
Error No. 41.....	490
Error No. 42.....	499
Error No. 43.....	505
Error No. 44.....	506
Error No. 45.....	542
Error No. 46.....	543
Error No. 47.....	545
Error No. 48.....	548
Error No. 49.....	550
Error No. 50.....	554
Error No. 51.....	577
Error No. 52.....	578
Error No. 53.....	579
Error No. 54.....	579
Error No. 55.....	580
Error No. 56.....	584
Error No. 57.....	584
Error No. 58.....	585
Error No. 59.....	587
Exceptions, Bill of.....	98



## Index.

Page

## EXHIBITS:

Exhibit—Copies of Drawings Made on Board by Counsel as to Splicing of Tendon Achilles.....	368
Exhibit—Facsimile of Drawing Made on the Board (2).....	115
Exhibit—Facsimile of Drawing upon the Board (1) .....	109
Exhibit—Illustration Drawn on Black-board as to Tendon Achilles.....	354
Plaintiff's Exhibit No. 1—Letter, April 1, 1912, Chatfield to Sheaff.....	220
Plaintiff's Exhibit No. 2—4 Letters, Chatfield to Sheaff.....	231
Plaintiff's Exhibit No. 3—6 Letters, Poole to Sheaff .....	234
Plaintiff's Exhibit No. 4—Photograph....	600
Plaintiff's Exhibit No. 5—Photograph....	601
Plaintiff's Exhibit No. 6—Photograph....	602
Plaintiff's Exhibit No. 7—Photograph....	603
Plaintiff's Exhibit No. 8—Photograph....	604
Defendant's Exhibit "A"—Check.....	173
Defendant's Exhibit "B"—Check .....	174
Defendant's Exhibit "C"—Check .....	175
Defendant's Exhibit "D"—Check.....	176
Defendant's Exhibit "E"—Check .....	177
Defendant's Exhibit "F"—Check .....	179
Defendant's Exhibit "G"—Check.....	180
Defendant's Exhibit "H"—Photograph...	605
Defendant's Exhibit "I"—Release .....	210
Defendant's Exhibit "J"—Letter, October 9, 1911, Sheaff to Chatfield.....	606

Index.

Page

EXHIBITS—Continued:

Defendant's Exhibit "K"—Letter, December 1, 1911, Sheaff to Pacific Power Co.	212
Defendant's Exhibit "L"—Letter, January 1, 1911 (1912), Sheaff to Pacific Power Co.....	213
Defendant's Exhibit "M"—Letter, February 13, 1912, Sheaff to Pacific Power Co.....	214
Defendant's Exhibit "N"—Letter, January 16, 1912, Sheaff to Pacific Power Co.....	607
Defendant's Exhibit "O"—Telegram—September 4, 1911, Poole to Sheaff....	243
Defendant's Exhibit "P"—Letter, February 14, 1912, Chatfield to Sheaff.....	244
Defendant's Exhibit "R"—Telegram, July 19, 1911, Dr. Gardner to Pacific Electric Co.....	364
Defendant's Exhibit "S"—Checks .....	288
Facsimile of Drawing Made on the Board (2)...	115
Facsimile of Drawing upon the oBard (1).....	109
Facsimile of Illustration Drawn on Blackboard as to the Tendon Achilles.....	354
Judgment.....	23
Motion for Order Granting New Trial.....	27
Notice of Intention to Move for a New Trial...	25
Opinion on Motion for a New Trial.....	28
Order Allowing Defendant to March 6, 1915, to File Petition for Writ of Error, etc.....	35



	Index.	Page
Order Allowing Writ of Error and Fixing Amount of Supersedeas Bond.....		92
Order Extending Time to File Record on Writ of Error and Docket Cause.....		591
Order for Removal.....		13
Order Granting Plaintiff in Error to May 10, 1915, to File Record in Appellate Court....		598
Order of Court Overruling the Demurrer, as Entered on the Law Journal, of Date February 8, 1913, at Page 758.....		13
Order Settling Bill of Exceptions.....		590
Petition for Writ of Error.....		36
Specifications of Particulars in Which the Ver- dict is Against Law.....		91
Stipulation as to Original Exhibits.....		588
Stipulation to Correctness of Bill of Excep- tions.....		589
Summons.....		8
Supersedeas Bond on Writ of Error.....		94
TESTIMONY ON BEHALF OF PLAIN- TIF:		
ADAMS, MRS. V. L. (in rebuttal).....		541
ADAMS, V. L. (in rebuttal).....		543
CAMPBELL, LEE.....		248
Cross-examination....		266
Further Direct Examination.....		268
Further Cross-examination....		272
Redirect Examination.....		282
Recross-examination....		284
DICKINSON, B. F.....		247

## Index.

Page

## TESTIMONY ON BEHALF OF PLAIN-

## TIF—Continued:

GARDNER, Dr. GEORGE M.....	340
Cross-examination.....	352
Redirect Examination.....	378
In rebuttal.....	548
Cross-examination.....	549
HALPENNY, R. H.....	289
Cross-examination....	293
Redirect Examination.....	293
HERRING, CLIFTON.....	320
Cross-examination....	327
Redirect Examination.....	337
Recross-examination....	339
SCRUGHAM, J. G.....	293
Cross-examination.....	305
Redirect Examination....	316
Recross-examination....	318
Redirect Examination....	320
SHEAFF, P. R.....	98
Cross-examination.....	128
Redirect Examination.....	217
Recross-examination.....	242
In rebuttal.....	549
Cross-examination....	551
STONE, CHARLES H.....	381
Cross-examination.....	382

TESTIMONY ON BEHALF OF DEFEND-  
ANT:

BLOCK, W. H.....	397
Cross-examination.....	400



	Index.	Page
TESTIMONY ON BEHALF OF DEFEND-		
ANT—Continued:		
CHATFIELD, W. N.....		534
Cross-examination.....		537
Redirect Examination.....		540
Recross-examination.....		541
GREENLEAF, P. W.....		401
Cross-examination.....		418
Redirect Examination.....		428
Recross-examination.....		429
HALPENNY, R. H.....		431
Cross-examination.....		459
Redirect Examination.....		491
Recross-examination.....		493
HERRING, CLIFTON.....		430
Cross-examination.....		431
MORRISON, DR. SIDNEY K.....		514
Cross-examination.....		525
Redirect Examination.....		533
Recross-examination.....		534
PERRIN, GEORGE L.....		392
Cross-examination.....		395
PITTMAN, W. V.....		513
Cross-examination.....		514
POOLE, CHARLES O.....		493
Cross-examination.....		502
Redirect Examination.....		511
Recross-examination.....		512
Verdict.....		23
Writ of Error.....		594

*In the Eighth Judicial District Court of the State  
of Nevada, in and for the County of Churchill.*

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Complaint.**

Now comes the above-named plaintiff by Curler and Martinson, his attorneys, and complaining of the above-named defendant for cause of action alleges and shows to the Court as follows, to wit:

I.

That the plaintiff now is and at all of the dates and times hereinafter mentioned has been a resident of the City of Oakland, Alameda County, State of California.

II.

That the defendant now is and at all of the dates and times hereinafter mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of California. That the defendant now is and at all of the times hereinafter mentioned has been engaged as a public service corporation in the business of generating, developing, transmitting, selling, distributing and delivering electricity and its resultants, electric energy, power, light and heat to its patrons [1\*] and customers in the states of California and Nevada, and particu-

---

\*Page-number appearing at foot of page of Original Certified Transcript of Record.



larly in Churchill County, Nevada, and has been and now is engaged in the business of constructing, maintaining and operating pole and wire lines, transformers and substations together with appliances, appurtenances and equipment used in conjunction and connection with said pole and wire lines and transformers, stations and substations for the transmission and distribution thereon and thereby of electricity and of the delivery of its resultants, electric energy, power, light and heat.

### III.

That on the 18th day of July, A. D. 1911, and for a period immediately prior and subsequent thereto at the Nevada Hills substation near Fairview in Churchill County, Nevada, the defendant did negligently, carelessly and recklessly and without regard to the security and personal safety of its employees, and without regard particularly to the security and personal safety of plaintiff herein, build, erect, construct and maintain a certain electrical equipment, structure and appliance called a lightning-arrester to which was attached high potential primary wires carrying electricity and electrical current in highly dangerous amount, potential and voltage, to wit, about sixty thousand (60,000) volts on each of said primary wires. That said defendant prior to said 18th day of July, 1911, did negligently, carelessly and recklessly, and without regard to the safety of its employees and particularly the plaintiff herein, build, erect, and, on said 18th day of July, A. D. 1911, did maintain said lightning-arrester in a defective manner and condition; that said lightning-arrester was

insufficient and defective in mode and manner of construction and design and was defective and dangerous in that high potential primary wires and the wires, rods, arms and appliances carrying [2] and transmitting electrical currents and energy of high and dangerous amount and voltage were not erected, built and maintained at a safe and sufficient height and distance from the ground but was built and maintained too near the ground and in too close proximity to the Nevada Hills station-house or transformer station.

#### IV.

That on said 18th day of July, A. D. 1911, plaintiff herein was in the employ of the defendant as a laborer and electrician's helper and was unfamiliar with the work of a journeyman lineman and electrician and was unacquainted with and ignorant of the dangers incident to the work of a journeyman lineman and electrician upon or near wires or apparatus carrying electrical current of high voltage and potential energy and plaintiff was receiving from defendant only the wages of a laborer or helper. That on said 18th day of July, 1911, plaintiff was ordered to work in and around and near said lightning-arrester and said Nevada Hills transformer-house and substation. That said place was a dangerous place in which to work by reason of the defects alleged herein and by reason of the fact that the live arms of said lightning-arrester were so near the ground and in so close proximity to said substation building. That said dangers and dangerous condition were wholly unknown to plaintiff herein and



plaintiff was ignorant of the same.

V.

That plaintiff on said 18th day of July, 1911, while working near and around said lightning-arrester as ordered by defendant came either in such close proximity to or in contact with one of the said arms of said lightning-arrester, whereupon a large amount of electrical current, to wit, sixty thousand (60,000) volts, passed through the body of plaintiff to the [3] ground, thereby inflicting upon plaintiff a violent electrical shock and severe and dangerous injuries.

VI.

That by reason of said negligent and defective construction of said lightning-arrester and by reason of its construction and maintenance at an unsafe and insufficient distance from the ground and by reason of its nearness to said transformer-house and by reason of the dangerous place in which plaintiff was ordered to work and of receiving said shock and charge of electricity, plaintiff sustained a number of serious and grievous injuries as follows, to wit, eight electrical burns in the upper and posterior portion of the left shoulder region; a burn on the right side in the suprascapular, scapular, infrascapular and interscapular regions; a burn extending upward from said last mentioned burn to both shoulders and to the neck behind, thence to the left side of the face as far as the upper portion of the left ear; a burn on the left foot extending from the dorsal and outer surfaces from the ankle above to the end of the toes below; a burn on the right foot and leg on the inner

side extending from three inches above the ankle bone running downward, forward and outward across the planter arch to the outer angle of the under surface of the foot and small toe. That said eight electrical burns on the upper and posterior portion of the left shoulder region were and are electrical burns of the third degree and were from one-half to four inches in diameter and destroyed the entire skin and muscular tissue for a depth of one inch or more. That said burn on the right side in the suprascapular, scapular, infrascapular and right interscapular regions was and is a wedge-shaped burn ten inches long and five inches wide at its upper base, and destroyed the entire skin and muscular tissue to a depth of an inch or more, [4] and near the base of this wedge-shaped burn at its upper portion was and is a circumscribed area of burned mass one and one half inches in diameter, the tissue in which was destroyed entirely to the scapular bone. That said burn extending from said last mentioned burn upward to both shoulders and to the neck behind and thence to the left side of the face as far as the upper portion of the left ear, was a burn of the first and second degree and destroyed the upper layers of the skin. That the burn on the left foot extending from the dorsal and outer surface from the ankle above to the ends of the toes below, was and is a burn five inches long and three inches in width and of the third degree and destroyed the entire skin and the three tendons supplying the three small toes, the muscular tissue down to the bone surfaces, all the nerves thereto and bones of the two small toes so that the



same had to be and were amputated; burns of the first and second degree extending from the area last described in various directions affect all of the remaining toes of said left foot. That the burn on the right foot and leg extending outward across the planter arch and the outer angle of the under surface of the foot and small toe, was and is a burn of the third degree about nine inches long and from two to three inches wide and destroyed the entire skin, muscular tissue, nerve filaments and portions of the extensor tendons down to the bone. That on account of the said physical injuries plaintiff was and has been compelled to undergo medical and surgical treatment from the date of said injuries up to the present time, and will continue to require and need such medical aid and treatment indefinitely; that as a consequence of said injuries, plaintiff was unable to leave his bed for a period of about three months and is still unable to walk, and suffered and still suffers grievous pain and anguish. [5]

#### VII.

That the plaintiff is informed and believes, and upon such information and belief alleges the fact to be, that said physical injuries are permanent in character and effect, to the extent that they will, during his entire remaining lifetime deprive him of the use of his feet and legs and make it impossible for him to perform manual labor and continue to cause him great physical pain and anguish.

#### VIII.

That by reason of said physical injuries and plaintiff's inability to work or perform manual labor,

plaintiff has been caused great and grievous mental anguish and suffering.

IX.

That by reason of the infliction of said physical injuries on plaintiff and by reason of the negligence, carelessness and wilful indifference of defendant as aforesaid, plaintiff has been damaged in the sum of Thirty Thousand Dollars (\$30,000.00), all of which remains due and unpaid from defendant to plaintiff. That by reason of the mental anguish suffered and to be suffered by reason of said injuries, plaintiff has been damaged in the sum of Ten Thousand Dollars (\$10,000.00), all of which remains due and unpaid from defendant to plaintiff.

WHEREFORE, plaintiff prays judgment against defendant for the sum of Forty Thousand Dollars (\$40,000.00) and costs of suit herein expended.

CURLER & MARTINSON,  
Attorneys for Plaintiff. [6]

State of Nevada,  
County of Churchill,—ss.

P. R. Sheaff, being first duly sworn, deposes and says: That he is the plaintiff in the above-entitled action; that he has heard read the above and foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information or belief and as to those matters he believes it to be true.

P. R. SHEAFF.



Subscribed and sworn to before me, this 10th day of April, A. D. 1912.

[Notarial Seal]

F. P. STRASSBURG,

Notary Public.

[Endorsed]: Filed this 10th day of April, A. D. 1912. C. L. Noble, Clerk. By J. T. Collins, Deputy Clerk. Curler & Martinson, Attorneys for Plaintiff, Reno, Nevada.

[Endorsed]: No. 1571. U. S. District Court, Dist. Nevada. Filed August 20, 1912. T. J. Edwards, Clerk. [7]

---

**[Summons.]**

*In the Eighth Judicial District Court of the State of Nevada, in and for the County of Churchill.*

The State of Nevada Sends to the Pacific Power Company, a Corporation, Greeting:

You are hereby required to appear in an action commenced against you as defendant by P. R. Sheaff, as plaintiff in the Eighth Judicial District Court of the State of Nevada, in and for the County of Churchill, and answer the complaint therein within ten days after the service on you of this summons (exclusive of the day of service) if served within said county, or twenty days if served out of said county but within said district, or in all other cases forty days; or judgment by default will be taken against you according to the prayer of said complaint. This action is brought to recover a judgment against you, defendant, and in favor of plaintiff for the sum of \$40,000.00 as damages alleged to have been and to

be sustained as the result of physical injuries, pain and mental anguish suffered and to be suffered by plaintiff arising from and caused by the alleged negligence and carelessness of you, defendant, in owning, erecting and maintaining certain pole and wire lines, transformers and substations, together with appliances, appurtenances and equipment, and particularly a certain lightning-arrester near the Nevada Hill substation in Churchill County, Nevada, through and over which electrical currents of high voltage, to wit, about sixty thousand (60,000) volts were being carried in an unsafe, defective and dangerous condition, and in ordering and directing the said plaintiff to work in and about said lightning-arrester, high voltage wires and appliances [8] without notice or proper warning thereby causing plaintiff to receive a violent electrical shock and sustain grave and serious physical injuries and undergo great physical and mental pain and suffering.

All of which will more fully appear from the complaint which is on file in the office of the clerk of said court at Fallon in said county, and to which you are especially referred. And you are further notified that if you fail to appear and answer said complaint, the said plaintiff will take judgment for the said amount, besides interest and costs of suit.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Fal-



on this 10th day of April, A. D. 1912.

[Court Seal]

C. L. NOBLE,

Clerk of the Eighth Judicial District Court of the  
State of Nevada, in and for the County of  
Churchill.

By J. T. Collins,

Deputy. [9]

---

*In the Eighth Judicial District Court of the State of  
Nevada, in and for the County of Churchill.*

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Affidavit [of Service of Summons].**

W. J. Box, being duly sworn deposes and says:  
That he is, and was, on the day when he served the  
annexed summons, a male citizen of the United States  
over the age of twenty-one years, and is not a party to  
the above-entitled action; that he received the an-  
nexed summons in the above action on the 12th day  
of May, A. D. 1912, and personally served the same  
upon the said defendant on the said 13th day of June,  
1912, by delivery to J. I. Cain the resident agent of  
said defendant corporation, the copy of said summons  
attached to a true copy of the complaint in said action  
therein *therein* named.

W. J. BOX.

Subscribed and sworn to before me this 13th day of June, A. D. 1912.

[Notarial Seal]

H. F. BREDE,  
Notary Public.

[Endorsed]: No. 429. In the Eighth Judicial District Court of the State of Nevada, *in for* the County of Churchill. P. R. Sheaff, Plaintiff, vs. Pacific Power Company, a Corp., Defendant. Summons. Filed this 18th day of June, A. D. 1912. C. L. Noble, Clerk. By J. T. Collins, Deputy Clerk. Curler & Martinson, Attorneys for Plaintiff, Reno, Nevada.

[Endorsed]: No. 1571. U. S. District Court, Dist. Nevada. Filed August 20, 1912. T. J. Edwards, Clerk. [10]

---

*In the Eighth Judicial District Court of the State of Nevada, in and for the County of Churchill.*

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Demurrer.**

Comes now the defendant above-named, and demurs to the complaint of plaintiff on file herein, and for grounds of demurrer specifies:

**I.**

That said complaint does not state facts sufficient to constitute a cause of action.



## II.

That said complaint is ambiguous in this, that it does not appear therein, nor can it be ascertained therefrom, what part or portion of the sum of Thirty Thousand Dollars (\$30,000.00) referred to in paragraph nine (9) of said complaint, and claimed as damages by said plaintiff, is alleged to be due for medical aid and treatment claimed to have been required and needed by plaintiff, and what part or portion thereof is alleged to be due by reason of the infliction of the alleged physical injuries claimed to have been sustained by plaintiff by reason of the alleged negligence and carelessness and willful indifference of defendant. [11]

## III.

That said complaint is unintelligible for the reasons set forth in paragraph II hereof.

## IV.

That said complaint is uncertain for the reasons set for in paragraph II hereof.

WHEREFORE, defendant prays that plaintiff take nothing by its said complaint, and that defendant may go hence dismissed, and for its costs herein incurred.

METSON, DREW & MacKENZIE,

Attorneys for Defendant.

[Endorsed]: Filed July 22, 1912. C. L. Noble, Clerk. By J. T. Collins, Deputy. Metson, Drew & MacKenzie, Attorneys for Defendants, Balboa Bldg., San Francisco.

[Endorsed]: No. 1571. U. S. District Court, Dist. Nevada. Filed August 20, 1912. T. J. Edwards, Clerk.

---

**Order of Court Overruling the Demurrer, as Entered on the Law Journal, of Date February 8th, 1913, at Page 758.**

“1571.

P. R. SHEAFF

vs.

PACIFIC POWER CO.

On motion of Mr. Benj. Curler, it is ordered that his name be entered of record as associate counsel for plaintiff; and that the firm name of Bartlett & Thatcher be entered as associate counsel for the defendant. Thereupon the demurrer was submitted without argument, overruled without an examination of the record, and the defendant given thirty days time within which to answer.” [12]

---

*In the Eighth Judicial District Court of the State of Nevada, in and for the County of Churchill.*

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Order for Removal.**

The defendant herein, having within the time pro-



vided by law, filed its petition for the removal of the above-entitled cause to the District Court of the United States in and for the District of Nevada, and having at the same time offered the undertaking required by law upon such removal, with good and sufficient surety pursuant to statute and conditioned according to law.

NOW, THEREFORE, this Court does hereby accept and approve such undertaking, and grants said petition, and does hereby order that this cause be removed for further proceedings and for trial to the District Court of the United States, in and for the District of Nevada, pursuant to the statutes of the United States in such cases made and provided, and that all proceedings in this court be stayed in said cause.

Dated July 22d, 1912.

L. N. FRENCH,  
Judge.

[Endorsed]: Filed July 22, 1912, C. L. Noble, Clerk,  
By J. T. Collins, Deputy. Metson, Drew & Mac-  
Kenzie, Attorneys for Defendant.

[Endorsed]: No. 1571. U. S. District Court, Dist.  
of Nevada. Filed August 20, 1912. T. J. Edwards,  
Clerk. [13]

[Answer.]

*In the District Court of the United States, in and for  
the District of Nevada.*

No. —.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

Now comes the defendant above named and answering the complaint of plaintiff on file herein states as follows:

I.

Denies that the plaintiff is now or at all or any of the dates and/or times mentioned in the complaint, has been a resident of the City of Oakland, Alameda County, California, but alleges that the defendant at the time of the commencement of this action was, ever since has been, and now is an alien and a subject and citizen of a foreign state, to wit, the Kingdom of Great Britain.

II.

Denies that on the 18th day of July, A. D. 1911, or for a period considerably prior thereto, or subsequent thereto, or at any other time or at all, at the Nevada Hills substation near Fairview in Churchill County, Nevada, or at any other place or at all, the defendant, did negligently or carelessly or recklessly or without regard to the security or per-



sonal [14] safety of its employees or without regard to the personal safety or security of the plaintiff, build or erect or construct or maintain a certain electrical equipment, structure or appliance called or designated as a lightning-arrester to which was attached high potential or any potential primary or other wires carrying electricity or electric current in highly dangerous amounts, potential or voltage, or in an amount of about sixty thousand volts in each of said primary wires or otherwise or at all.

Denies that prior to the 18th day of July, A. D. 1911, or at any other time or at all, this defendant did negligently or carelessly or recklessly or without regard to the safety of its employees, or particularly without regard to the safety of plaintiff herein, build or erect, or on said 18th day of July, A. D. 1911, or at any other time or at all, maintain the lightning-arrester referred to in said complaint, or any of its lightning-arresters in a defective manner or condition; and denies that said or any lightning arrester was insufficient and defective, or insufficient or defective in mode and manner, or mode or manner of construction and design or mode of construction, or design, or was defective and dangerous or defective or dangerous in that high potential primary wires, or the wires or rods or arms or appliances carrying or transmitting electrical currents and energy of high and dangerous amount of voltage or electrical currents or energy of high or dangerous amount of voltage, were not erected, built and maintained, or erected, built or maintained, at a safe or sufficient height and distance, or safe or sufficient height or

distance from the ground, or were, or that any of them was built too near the ground or in too close proximity to the Nevada Hills station-house or transformer station. [15]

On the contrary this defendant alleges that the electrical equipment, structure and appliance called and designated a lightning-arrester referred to in said complaint and the whole of its parts was erected, built, constructed, placed and maintained in the proper and usual method of erection, construction, placing and maintenance of similar electrical equipment and with due regard to the safety of the employees of the defendant including said plaintiff and was free from any defects as a whole or in any of its parts.

### III.

Denies that on the said 18th day of July, A. D. 1911, plaintiff was in the employ of the defendant as a laborer but admits that he was employed as an electrician's helper; denies that said plaintiff was unfamiliar with the work of a journeyman lineman or electrician; denies that plaintiff was unacquainted with or ignorant of the dangers incident to the work of a journeyman lineman or electrician upon or near wires or apparatus carrying electrical current of high voltage and/or potential energy.

Denies that the place where plaintiff was ordered to work was dangerous by reason of the alleged defects set forth in said complaint or by reason of any defects, or by reason of the fact that the live arms of said lightning-arrester were so near the ground and/or in too close or other proximity to the sub-



station building; and denies that said place was a dangerous place in which to work for any other reason or at all, excepting the ordinary danger surrounding all electrical apparatus or appliances; denies that the alleged dangers set forth in said complaint, if any, were totally or otherwise unknown to plaintiff or that he was ignorant of the same.

On the contrary this defendant alleges that the place [16] where the said plaintiff was working was not a dangerous place but was a usual and safe place to work for the purposes of its said business and the employment of plaintiff, excepting for those ordinary dangers surrounding all electrical apparatus or appliances, and alleges that the plaintiff had received full warning and information of these ordinary dangers which were incident to his employment and the place thereof, and had full knowledge of the same.

#### IV.

This defendant has no knowledge or belief upon the subject sufficient to enable it to answer the allegations in Paragraph V of said complaint and therefore and upon that ground denies that plaintiff on said 18th day of July, 1911, or at any other time or at all, while working near and/or around said lightning-arrester, came either in such close proximity to or contact with one of the arms of said arrester whereby a large or any amount of electrical current, to wit, sixty thousand voltage or any other amount passed through plaintiff's body, thereby or otherwise inflicting upon plaintiff a violent electrical shock and severe and dangerous injuries or a violent

electricial shock or severe or dangerous injuries.

V.

Denies that by reason of the alleged negligent and defective or alleged negligent or defective construction of said lightning-arrester, or by reason of its construction and maintenance, or construction or maintenance at any unsafe and insufficient or unsafe or insufficient distance from the ground, or by reason of its nearness to said transformer station or by reason of the dangerous place in which plaintiff was ordered to work, or of receiving said alleged shock and/or charge of electricity, or for any one or either or all of such reasons [17] or at all, the plaintiff sustained a number of serious and/or grievous injuries, or any of the injuries set forth in said complaint.

That this defendant has no information or belief upon the subject sufficient to answer the allegations of paragraph V of said complaint as to the alleged number and variety of said injuries of the plaintiff set forth therein, and therefore and upon that ground denies the existence of the same or any thereof.

This defendant has no knowledge or information upon the subject sufficient to answer the further allegation in said paragraph V contained, that plaintiff at the time of the filing of said complaint required medical and/or surgical treatment, and/or that he will require such and/or surgical treatment for an indefinite or any other period or that the said plaintiff was unable to leave his bed for a period of three months, or is still unable to walk, or that the said plaintiff suffered or still suffers grievous or any



other pain and/or anguish and therefore and upon that ground denies the same.

VI.

This defendant has no information or belief upon the subject sufficient to enable it to answer and therefore denies that the alleged physical or other injuries of the plaintiff are permanent in character and effect, or permanent in character or effect, or that the said or any injuries alleged to have been sustained will during the entire lifetime of the plaintiff or otherwise or at all deprive him of the use of his feet and/or legs, or make it impossible for him to perform manual labor, or continue to cause his great or any physical pain or anguish. [18]

VII.

Denies that by reason of the infliction of said alleged physical injuries on plaintiff, or by reason of the negligence or carelessness or wilful indifference of defendant or otherwise or at all the plaintiff has been damaged by the defendant in the sum of Thirty Thousand Dollars (\$30,000) or in any other sum or at all.

Denies that by reason of the mental or any anguish alleged to have been suffered, or to be suffered by reason of said injuries, or for any other reason or at all this defendant is indebted to the plaintiff in the sum of Ten Thousand Dollars (\$10,000), or in any other sum or at all.

For a first, further and separate affirmative answer and defense to said action, plaintiff alleges:

I.

That the accident and injuries resulting therefrom

to the plaintiff, if any he received, were caused by his own fault, carelessness and negligence, in failing to exercise his natural faculties in a reasonable way to avoid injury and in failing to conduct himself in a reasonably careful and prudent manner while engaged in and about his said employment.

For a second, further and separate answer and defense, this defendant alleges that—

All of the conditions surrounding the plaintiff at the time of the accident alleged in plaintiff's complaint and all of the dangers and risks incident thereto were open and explained to and understood by the plaintiff and plaintiff had full knowledge thereof and such dangers and risks were assumed by him as a part of his employment. [19]

As a separate answer and defense, this defendant alleges that the accident and injuries resulting therefrom to the plaintiff, if any he received, were proximately contributed to by his own fault, carelessness and negligence, in failing to exercise his natural faculties in a reasonable way to avoid injury, and in failing to conduct himself in a reasonably careful and prudent manner while engaged in and about his said employment, and in going to and from his said employment.

WHEREFORE, defendant prays that plaintiff take nothing by reason of his said complaint and that his action be dismissed and that this defendant have judgment for its costs and disbursements herein.

METSON, DREW & MACKENZIE,  
BARTLETT & THATCHER,

Attorneys for Defendant. [20]



State of California,

City and County of San Francisco,—ss.

Floyd Shank, being duly sworn, on oath deposes and says: That he is an officer, to wit, the Secretary of the Pacific Power Company, the defendant above named. That he has read the above and foregoing Answer and knows the contents thereof and that the same is true of his own knowledge, except as to those matters that are therein stated on information and belief and as to those matters he believes it to be true.

FLOYD SHANK.

Subscribed and sworn to before me this 20th day of March, 1913.

[Seal]

FLORA HALL,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: District Court of United States in and for the District of Nevada. No. 1571. P. R. Sheaff, Plaintiff, vs. Pacific Power Company, Defendant. Answer. Due Service of the Within Answer Accepted this 20th Day of March, 1913. B. F. Curler and Geo. Martinson, Attorneys for Plaintiff. Filed March 22, 1913. T. J. Edwards, Clerk.

[Verdict.]

*In the District Court of the United States for the  
District of Nevada.*

No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

We the jury in the above-entitled cause find for the  
plaintiff and assess the damages at \$15,000.

Dated December 23, 1913.

GEO. PLUMMER,  
Foreman.

[Endorsed]: No. 1571. U. S. Dist. Court, Dist.  
Nevada. P. R. Sheaff vs. Pacific Power Co. Verdict.  
Filed Decr. 23d, 1913. T. J. Edwards, Clerk. [21]

---

[Judgment.]

*In the District Court of the United States for the  
District of Nevada.*

No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.



This cause came on regularly for trial at the October term, 1913, of this Court, the parties appearing by their attorneys of record. A jury of twelve persons was accepted by the plaintiff and the defendant, and duly sworn to try the issue; and after hearing the evidence, oral and documentary, introduced by the respective parties, the arguments of counsel, and the instructions given by the Court, and after due deliberation thereon, the jury came into court this day with their verdict in favor of the plaintiff in the sum of Fifteen Thousand (\$15,000) Dollars, and so they all say:

It is therefore considered and adjudged that the said plaintiff have and recover of and from the said defendant, Pacific Power Company, a corporation, the sum of Fifteen Thousand (\$15,000) Dollars, with interest thereon from this date until paid at the rate of seven per cent per annum, together with his taxable costs and disbursements herein incurred, amounting to \$222.80.

Dated and entered December 23d, 1913.

Attest: T. J EDWARDS,

Clerk. [22]

United States of America,  
District of Nevada,—ss.

I, T. J. Edwards, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that the above and foregoing is a full, true, and correct copy of the original judgment now of record in my office; and that the foregoing constitutes and is the judgment-roll in said action.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said court, at my office in Carson City, this the 23d day of December, A. D. 1913, and in the year of our Independence the 138th.

[Seal]

T. J. EDWARDS,  
Clerk.

[Endorsed:] No. 1571. U. S. District Court, District of Nevada. P. R. Sheaff vs. Pacific Power Company, a Corporation. Judgment-roll. Filed December 23d, 1913. T. J. Edwards, Clerk. [23]

---

*In the District Court of the United States, in and  
for the District of Nevada.*

No. —.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Notice of Intention to Move for a New Trial.**

To the Plaintiff in the Above-entitled Action, and  
Messrs. Curler and Martinson, and F. S. Gedney,  
Esq., His Attorneys:

YOU and each of you will please take notice that the defendant in the above-entitled action intends to, and will, move for an order vacating, annulling and setting aside the verdict and judgment in said action, and granting a new trial thereof, and that said motion will be made on the following grounds, to wit:



1. Excessive damages appearing to have been given under the influence of passion.
2. Excessive damages appearing to have been given under the influence of prejudice.
3. Insufficiency of the evidence to justify the verdict.
4. That the verdict is against law.
5. Errors in law occurring at the trial and excepted to by the defendant. [24]

Said motion will be made and based on the minutes of the court in said cause, and the pleadings and proceedings on file in the clerk's office therein.

Said motion will be brought on for argument on the first succeeding motion day of the term at which it can be heard after the giving of this notice.

And you will further take notice that the defendant will be ready to proceed with the argument of said motion on the 2d day of February, 1914, at the hour of 10 o'clock A. M. of said day, in the courtroom of the above-entitled court in the Federal Building, situated in the City of Carson, State of Nevada, or on such other day thereafter as may be agreeable to the Court.

And you are further notified that there is served and filed therewith a motion and petition on behalf of the defendant for a new trial of said action, which motion and petition will be brought on for argument at the time and place above stated.

Dated January 12, 1914.

METSON, DREW & MacKENZIE,  
WM. M. CANNON,  
GEO. B. THATCHER and  
GEO. A. BARTLETT,

Attorneys for Defendant.

(Mo. for new trial hereto attached.—Clerk.) [25]

*In the District Court of the United States for the  
District of Nevada.*

No. —.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Motion for Order Granting New Trial.**

The defendant in the above-entitled action hereby moves and petitions the above-entitled court for an order vacating, annulling and setting aside the verdict and judgment in said action, and granting a new trial thereof on the following grounds, to wit:

1. Excessive damages appearing to have been given under the influence of passion.
2. Excessive damages appearing to have been given under the influence of prejudice.
3. Insufficiency of the evidence to justify the verdict.
4. That the verdict is against law.
5. Errors in law occurring at the trial and excepted to by the defendant.

This motion and petition is made and based on the



minutes of the court in said action, and the pleadings and proceedings [26] on file in the clerk's office therein.

Dated January 12, 1914.

METSON, DREW & MacKENZIE,  
WM. M. CANNON,  
GEO. B. THATCHER and  
GEO. A. BARTLETT,

Attorneys for Defendant.

[Endorsed]: No. 1571. In the District Court of the United States for the District of Nevada. P. R. Sheaff, Plaintiff, vs. Pacific Power Company, a Corporation, Defendant. Notice of Intention to Move for New Trial, and Motion for Order Granting New Trial. Filed January 12, 1914. T. J. Edwards, Clerk. Wm. M. Cannon, Esq., Attorney for Defendant, 58 Sutter Street, San Francisco, Cal. [27]

---

**[Opinion on Motion for a New Trial.]**

*In the District Court of the United States, in and  
for the District of Nevada.*

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

CURLER & GEDNEY, for Plaintiff.

GEO. A. BARTLETT, WM. M. ABBOTT,  
WM. M. CANNON, for Defendant.

FARRINGTON, District Judge:

In passing on the motion for new trial I shall not

attempt to discuss the testimony at length, or but one or two of the numerous assignments of error. The point urged with greatest confidence by defendant is that Sheaff was guilty of contributory negligence, and this, indeed, is the most difficult question presented by the record. In considering it, we must constantly bear in mind that the burden of alleging and proving contributory negligence is on the defendant.

The lightning-arrester on which Sheaff was set to work, and where he was injured, was not only incomplete, but it was unnecessarily dangerous. Placing the arrester so close to the ground was negligent. It is true, the company put a wire fence around the structure, and also posted warning notices; nevertheless, the structure could very easily have been raised several [28] feet higher. There was an attempt on the part of the company to show that this would not be advisable, because employees working on the arrester would then be obliged to use ladders, and thus be in greater danger than if standing on the ground. It occurs to me, however, that a barrier—a board or railing—might easily have been placed between the lower end of the live arms of the arrester and the building in such a way as to have prevented any accidental contact.

The purpose of building and maintaining the arrester was to furnish a vent or escape for dangerous quantities of electricity, which, in excess of the normal and usual voltage might accidentally, or otherwise, find their way onto the line.

The arrester here was so constructed that its three



north arms were attached, one to each of the three high-tension feed wires running into the transformer-house, and consequently, when so attached, each of the three arms was charged with electricity whenever the feed wires were carrying a current. The lower horn or end of each live arm came within about six feet of the ground and  $3\frac{1}{2}$  feet from the south end of the transformer-house. On the south side of the arrester were three dead arms or pipes, ordinarily free from electricity, corresponding to the three live arms on the opposite side. The dead arms nowhere came in contact with the live arms, or near them, except at the gap, where they were about  $3\frac{1}{4}$  inches apart; the theory of the structure being that in the presence of unusual quantities of electricity, the excess would leap from the live arms to the dead arms, and thence by wires connecting the latter to the ground, would be discharged.

In considering the conditions at the time of the accident, we must not overlook the fact that the arrester was incomplete; there was no connection with the ground. Notwithstanding [29] this fact, the connection with the high feed wires had been made, and in consequence, the arrester, though incapable of performing its functions, was charged with the full voltage of electricity then on the high tension wires, something like sixty thousand volts. Thus the arrester had been connected with the source of the electricity, but there was no harmless path by which the excess, if any, could be discharged into the ground. It was to prepare for the connection with the ground that Sheaff was set to work digging

holes under the dead arms of the arrester. He was directed to dig these, and to place in each an iron-bound cement block. If during the time he was so engaged any unusual quantity of electricity had found its way on to the feed wires, the dead arms under which he was at work would probably have been quite as dangerous as the live arms on the other side of the arrester.

After digging the holes, Sheaff passed around the west end of the arrester, intending to go between the arrester and the transformer-house for the cement blocks. Here the accident occurred.

We are looking at the case after the event. It is easy now to see how Sheaff might have avoided the accident, and how defendant with a few precautions might have rendered it impossible. Sheaff, however, cannot be deemed at fault because he failed to take precautions, the necessity of which he neither knew nor appreciated at the time.

The rule given to the jury was that Sheaff must be held responsible, not only for such present knowledge and appreciation as he actually had of the dangerous conditions, but also such as he ought to have had.

The testimony of the witness Campbell that he called superintendent Halpenny's attention to the dangerous and defective condition of the structure, and the further fact that [30] the structure was left as it was, within six feet of the ground, without barriers or protection, and unnecessarily charged with the full current of electricity which was passing over the feed wires, indicates clearly that Mr. Hal-



penny himself did not realize or appreciate what a perilous situation he was leaving for a man who might thereafter be engaged in completing the structure, or repairing it, or who for any purpose might be within the enclosure. This conclusion is not weakened by the location of such signs, indications and warnings of danger as defendant relies on. None of these warnings specifically indicated danger at the lower arm of the arrester next to the transformer-house; or that the arrester had been charged with the full current of electricity before any proper ground had been constructed. Boards nailed from each end of the building to the corresponding end of the arrester would have effectually warned Sheaff or any other person who might be within the enclosure, not to go between the building and the arrester. Nothing of this kind was done.

It is unreasonable to hold Sheaff to any greater knowledge or appreciation of the hazards of this situation than superintendent Halpenny and other electricians under him exhibited when their attention was called to these conditions by Campbell, and when Mr. Halpenny set Sheaff to work digging the holes.

Sheaff testifies he did not know at the time that electricity would jump from the lower end of the live arms of the arrester. There is nothing which indicates that he voluntarily, or even carelessly, brought himself into actual contact with the pipes. The bubble on the lower arm of the arrester from which he received the shock, indicates that the electricity leaped to him, and the nature and location

of the [31] injuries on his person bear out this theory.

It is admitted that Sheaff was employed as an electrician's helper. There is evidence showing that he had had experience with electricity and electrical appliances, and also that he had performed on another arrester the same character of work which he was directed to do on the occasion when he was injured; but my attention has been called to no evidence that on the former occasion the arrester was so connected with high tension wires as to be charged with dangerous quantities of electricity while he was actually digging the holes and placing the cement blocks.

The testimony that Sheaff was directed not to connect the cement blocks with the arms of the arrester, and that he had been warned not to come in contact with live wires, is evidence tending to show that defendant itself realized that Sheaff did not fully know and appreciate the dangers and risks of the work in which he was engaged. He was entitled to believe, unless he knew something to the contrary, that defendant would not expose him to unnecessary danger, and that the structure about which he was called to work would not be unnecessarily charged with dangerous quantities of electricity.

Cases of this kind differ from those which have been cited where the danger was open and apparent to one in the exercise of his ordinary senses. A live wire or a live pipe such as we have in this case, is not like an opening in a floor, or a rapidly revolving wheel, which people may see and avoid. A live wire



is quite as innocent in appearance as a dead one; it gives no warning before it delivers the fatal shock.

I am unable to see how the jury could have come to any other conclusion than that defendant was guilty of gross carelessness; that by the exercise of a slight degree of care on its [32] part the accident to Sheaff could have been prevented; and I also believe that the testimony, though conflicting, is sufficient to support the conclusion reached by the jury that Sheaff was not guilty of contributory negligence.

Defendant insists that the real charge of negligence is in setting an employee at work in a dangerous place; and that several elements are necessary to make such a cause of action, to wit:

1. The place must be dangerous;
2. The employee must be inexperienced and ignorant of the danger;
3. The employer must know of plaintiff's ignorance and inexperience, and
4. The employee must be set at work without instruction or warning of danger.

The objection that the complaint does not set out a cause of action because it fails to allege defendant was ignorant of Sheaff's inexperience and lack of knowledge, does not appeal to me. I cannot reconcile this objection with the position taken by defendant when, during the course of the trial, plaintiff asked to amend his complaint by inserting an allegation therein that defendant knew plaintiff was inexperienced in electricity, and failed and neglected to warn or caution him at the time he was set to work on the arrester.

The motion for new trial will be overruled. Each party will have twenty days within which to take such steps as he may be advised.

[Endorsed]: No. 1571. In the District Court of the United States, in and for the District of Nevada. P. R. Sheaff, Plaintiff, vs. Pacific Power Company, a Corporation, Defendant. Opinion on Motion for New Trial. Filed October 29th, 1914. T. J. Edwards, Clerk. [33]

---

*In the District Court of the United States for the District of Nevada.*

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Order [Allowing Defendant to March 6, 1915, to File  
Petition for Writ of Error, etc.].**

Sufficient cause appearing therefor, it is ORDERED, that the defendant in the above-entitled cause have to and including the sixth day of March, A. D. 1915, within which to file petition for Writ of Error, Assignment of Errors, Order Allowing Writ of Error and Fixing Amount of Supersedeas Bond, and Supersedeas Bond on Writ of Error, and take such other steps as it may be advised for all purposes, and that plaintiff have the same time within which to take such steps as he may be advised for all purposes.



Dated Carson City, Nevada, March first, 1915.

E. S. FARRINGTON,  
District Judge.

[Endorsed]: No. 1571. In the District Court of the United States for the District of Nevada. P. R. Sheaff, Plaintiff, vs. Pacific Power Company, a Corporation, Defendant. Order Extending Time to File Petition for Writ of Error, etc. Filed March 1st, 1915. T. J. Edwards, Clerk. Geo. A. Bartlett, Carson City, Nev. Attorney for ————. [34]

---

*In the District Court of the United States, in and for  
the District of Nevada.*

No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Petition for Writ of Error.**

Now comes Pacific Power Company, a private corporation, defendant herein, and feeling itself aggrieved by the verdict of the jury and the judgment entered thereupon on the 23d day of December, 1913, whereby it was adjudged that plaintiff have and recover from defendant the sum of Fifteen Thousand Dollars (\$15,000.00) and costs and disbursements in this action, says that in said judgment and in the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of this de-

fendant, all of which will more in detail appear from the Assignment of Errors, which is filed with this petition;

WHEREFORE, this defendant prays that a Writ of Error may issue in its behalf to the United States Circuit Court of Appeal in and for the Ninth Circuit, and according to the laws of the United States in that behalf made and provided, and that said defendant be permitted to prosecute the same to said mentioned Court, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to said last mentioned [35] Court, and that an order be made fixing the amount of a supersedeas bond, which the defendant shall give and furnish upon said Writ of Error, and that upon the giving of said bond all further proceedings in this court be suspended, stayed and superseded until the determination of said Writ of Error by the said United States Circuit Court of Appeals, in and for the Ninth Circuit. And your petitioner will ever pray.

Dated this 4th day of March, 1915.

WILLIAM M. ABBOTT,  
WILLIAM M. CANNON,  
METSON, DREW & MacKENZIE,  
GEORGE A. BARTLETT,

Attorneys for Defendant.

[Endorsed]: No. 1571. In the District Court of the United States in and for the District of Nevada. P. R. Sheaff, Plaintiff, vs. Pacific Power Company, a Corporation, Defendant. Petition for Writ of



Error. Filed March 4th, 1915. T. J. Edwards,  
Clerk. Wm. M. Abbott, Wm. M. Cannon, George A.  
Bartlett. Attorneys for Defendant.

8645 [36]

---

*In the District Court of the United States, in and for  
the District of Nevada.*

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

### **Assignment of Errors.**

Now comes the defendant herein, Pacific Power  
Company, a corporation, and in connection with its  
petition for a Writ of Error in the above-entitled  
cause, suggests that there was error on the part of  
the above-entitled court in regard to matters and  
things hereinafter set forth, and specifies the follow-  
ing as errors upon which it will urge its Writ  
1 of Error in the above-entitled action, to wit:

### **ASSIGNMENT OF ERRORS.**

#### **I.**

That during the trial of said action the plaintiff,  
P. R. Sheaff, was called as a witness in his own behalf  
and was asked the following question:

“Mr. GEDNEY.—Q. Now what have you learned  
since that time which informed you of that fact?

A. Well, I have been told by electricians that I  
would get—that anybody would get a shock there.”

[37]

That defendant objected to this question and answer as immaterial and as hearsay, and moved to strike out the answer as hearsay, immaterial, irrelevant and incompetent. Said objection was  
2 overruled and said motion to strike out said answer denied, to which defendant then and there duly excepted, which ruling the defendant now assigns as error on the part of the trial court.

II.

That the following question was then propounded to said witness:

“Q. Now state the substance of that writing as near as you can state it?

A. The paper stated that if I would sign it, and release the Pacific Power Company from all obligations, that they would pay my expenses for six months from the date of my injury, and would also pay me half wages for six months.”

3 That defendant objected to said question and answer as immaterial, irrelevant and incompetent, and upon the further ground that no foundation had been laid, which objection was overruled and the defendant then and there excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

III.

That during the trial of said action, Lee Campbell was called as a witness on behalf of plaintiff and was asked the following question:

“Mr. CURLER.—Q. What was said?

A. As near as I can place it word for word I  
4 made the remark that that was criminal carelessness to leave that lightning-arrester that



low, that close to the ground.”

That defendant objected to said question and answer as [38] immaterial, irrelevant and incompetent and that no foundation had been laid therefor, which objection was overruled and the defendant then and there excepted thereto, which ruling the defendant now assigns as error on the part of the trial Court.

#### IV.

That thereafter during the examination of said witness the following proceedings were had and taken:

“Q. What else was said further than that, and by whom?

5       Mr. CANNON.—Before this question is answered, let it be assumed, if the Court please, that I renew my objection to each of these questions along this line, as they are asked.

The COURT.—To the whole matter in relation to this conversation, unless it goes outside the lines I have already indicated.

Mr. CANNON.—I move to strike out this answer on the ground it is incompetent, irrelevant and immaterial, and hearsay.

The COURT.—Suppose you leave that motion until the conversation is in.

Mr. CANNON.—So long as we will not be considered to have waived it.

6       The COURT.—You will not be considered to have waived it, and after it is in, you can make such motions as you wish.

Mr. CANNON.—And consider each question ob-

jected to on the grounds already stated, and on the further ground there is no proof here at this time that the construction was in fact defective in any way, shape or form.

Mr. CURLER.—We expect to show that later on, your Honor. We cannot show it all at once. What was the last question?

Q. (The reporter reads the question.)

7       A. Well, it was just a general remark amongst the bunch of us there, Mr. Halpenny and Mr. Greenleaf, and Mr. Herring and myself, [39] in regard to the height of that from the ground.

The COURT.—Q. What did each one say?

A. To bring the exact words down—

Q. As near as you can give it.

A. I made the remark it was dangerous and careless to go away and leave that in that position, and Mr. Halpenny stated to Mr. Greenleaf; he says, ‘Are you going to put that up now and leave it that way?’ and Mr. Greenleaf says, ‘We will have  
8       to put something here; it will not be safe to leave it any other way, without a lightning-arrester here, or some protection on this end of that line.’ That was the remarks, I believe, as far as the conversation was concerned. They had a talk between themselves, but I don’t just recollect what it was, something in regard to lightning.

Q. Where was Mr. Sheaff at this time, if you know?

A. He was generally all around, first one place and then another, around the building; but I believe at



the time I made this remark, I think he was standing  
around the corner on this side, doing some-  
9 thing with the wire.

Mr. CANNON.—By ‘this side’ you mean  
what, the north side?

A. The north side of the building; or he might have  
been just over the hill there; I don’t know just where  
he was at the time of the conversation; I don’t know  
just exactly where he was at the time I made this  
remark.

Mr. CURLER.—Q. Was he present with you and  
these other men at that time?

A. Not at the time that I made this remark, to the  
best of my knowledge; he may have been di-  
10 rectly behind me, but I didn’t see him; he  
wasn’t in my sight at the time I made this re-  
mark.

Mr. CAMPBELL.—Basing your opinion upon  
your experience with electricity—

Mr. CANNON.—That is all of the conversation, is  
it, Judge? [40]

Mr. CURLER.—Yes.

Mr. CANNON.—Your Honor, I move to strike out  
all the conversation as incompetent, irrelevant and  
immaterial, and hearsay; no foundation laid for its  
introduction; no evidence of any defective character  
of the lightning-arrester itself; and as to whether or  
not it was defective or unscientific in any particular  
is a false quantity in this case, and has nothing  
11 to do with it; and is merely the expression of  
the opinion of the witness on the stand.

The COURT.—The motion is denied.”

That defendant thereupon duly excepted to the refusal of the Court to strike out said conversation, and the refusal of the Court to strike out said conversation is hereby assigned as error.

## V.

That thereafter, and during the examination of said witness, the following proceedings were had and taken:

“Mr. CAMPBELL.—Basing your answer upon your experience as an electrician, was the lightning-arrester a standard construction with reference to the height of the live ends of the lightning-arrester?  
12

Mr. CANNON.—We object on each and all of the grounds heretofore stated; and on the further ground the question as to whether it is standard or not standard is absolutely immaterial; the rule of law applicable to cases of this kind being, if the question of the construction is material at all, that it need only be reasonably fit for the purpose intended; it does not have to be of the latest design or construction; it does not have to be of any standard construction; it must only be, considering all the circumstances surrounding the particular place where it is to be used, and the manner in which it is to be used, reasonably fit for the purpose intended. [41]  
13

The COURT.—There is no question but what that is the rule. One is not required to use the very best construction, or the very latest devices, but to use what an ordinary prudent man engaged in the same business would have used at that time. I think this



question tends to bring that out, and I will allow the question."

That the action of the Court in overruling  
14 said objection and allowing said question to be asked and answered was thereupon duly excepted to and is here assigned as error.

## VI.

That thereafter during the examination of said witness, the following proceedings were had and taken:

"Mr. CURLER.—Q. Well, Mr. Campbell, what is the usual height of the live ends of a lightning-arrester of this kind among men who are reasonably careful in the construction?"

Mr. CANNON.—Object to that, if the Court please, upon each and all of the grounds heretofore stated; and upon the further ground that it calls for  
the opinion of this witness as to what other  
15 people do who are reasonably careful, as to whether other people are reasonably careful. And, furthermore, that it is too general; it is very plain that there might be one rule applicable to a lightning-arrester in a city or town where children are apt to get into contact with it, and an absolutely other and different rule, on the top of a hill in the desert or uninhabited portion of the State, where people are not likely to come in contact with it.

The COURT.—The objection will be overruled.

Mr. CANNON.—We note an exception.

(By direction the reporter reads the question.)

16 A. I will have to answer that question by observation that I have saw along this power

line. They have those lightning-arresters—some places they are seven feet from the ground, and [42] some places twelve feet; in my opinion, I should not think they were safe less than twenty or twenty-two feet.”

That the action of the Court in overruling defendant’s said objection and allowing said question to be asked and answered was thereupon duly excepted to and is hereby assigned as error.

## VII.

17 That during the examination of said witness, the following answer was given to a question propounded said witness:

“A. I will have to answer that question by observation that I have saw along this power line. They have those lightning-arresters—some places they are seven feet from the ground, and some places twelve feet; in my opinion, I should not think they were safe less than twenty or twenty-two feet.

Mr. CANNON.—I move to strike out the answer of the witness and object to all of the remarks heretofore stated, and to strike out that part which relates to his opinion as not responsive to the question  
18 because it called for the usual construction.

The COURT.—The latter part of the answer may be stricken out on the ground it is not responsive to the question. The motion as to the remainder of the answer will be denied.”

That the action of the Court in refusing to strike out the remainder of said answer was duly excepted to and is hereby assigned as error.



## VIII.

That during the examination of said witness, the following question was asked and answered:

“Mr. CURLER.—Q. Mr. Campbell, in your  
19 experience prior to the time that you observed  
this structure—this lightning-arrester—had  
you ever seen a lightning-arrester of this character  
constructed so that the live ends of the lightning-ar-  
rester were as close to the ground as this one is?  
[43]

A. Never.”

That defendant objected to this question and answer upon the grounds of former objection, to which the Court made the same ruling, and the defendant then and there duly excepted thereto, which ruling the defendant now assigns as error.

## IX.

That during the examination of said witness, the following question was asked and answered:

“Mr. CURLER.—Q. Mr. Campbell, did you ever  
see any other lightning-arrester constructed  
20 on the same principle as this one is?

A. No, sir, not outside of this present power line.”

That defendant objected to this question and answer upon the same grounds as had been urged to the previous question and answer, which objection was overruled, and the defendant then and there duly excepted thereto, which ruling the defendant now assigns as error on the part of the trial Court.

## X.

That during the examination of said witness, the

following question was asked and answered:

“Mr. CURLER.—Q. Where have you seen  
21 lightning-arresters constructed on the same  
principle as this?

A. I saw one in Aurora.”

Said question and answer were objected to on the same grounds as the former questions to the same effect, which objection was overruled, and the defendant then and there excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

## XI.

That during the examination of said witness, the following question was propounded to said witness:  
[44]

“Mr. CURLER.—Q. Do you know from your experience as an electrician whether the distance between the live and dead end of the horns of  
22 the arrester is determined by the amount of voltage the line carries?

A. I do, that is the way they measure it.”

That defendant objected to this question and answer on the ground that it was incompetent, irrelevant and immaterial and outside of the issues, which objection was overruled, and the defendant then and there duly excepted thereto, which ruling the defendant now assigns as error on the part of the trial Court.

## XII.

That during the examination of said witness, the following proceedings were had and taken:



“Q. Mr. Campbell, is this the ordinary type of lightning-arrester, generally used?

23 Mr. CANNON.—We object on the ground it calls for the opinion of the witness, and is incompetent, irrelevant and immaterial, and outside of any issue in this case.

The COURT.—Well, he has testified that he never saw this type except in certain places already, has he not? I think he has testified to seeing other types of arresters in other places. It seems to me he has already answered that in response to your question. You can ask the question, but it seems to me it has already been answered.

24 Mr. CURLER.—I would like to have the question answered.

The COURT.—Very well.

Mr. CANNON.—We note an exception. Would your Honor allow me to add one other ground to my objection; namely, that the only points made in the pleadings as to any defect in this arrester, is as to its distance from the ground. There is not any charge in the complaint, as I have read it, that states that [45] the lightning-arrester itself is a defective construction, or not one of general use. Let me read the allegation in the complaint. (Reads allegation III in the complaint.)

(Argument.)

25 The COURT.—Well, I am exceedingly doubtful about it, Judge Curler, but you are so confident about the matter, I will allow you to put it in. The defendant may have an exception.

A. That is used by some companies.”

The action of the Court in overruling said objection and allowing said question to be answered was thereupon duly excepted to and here assigned as error.

XIII.

That during the examination of said witness, the following question was propounded to said witness:

“Mr. CURLER.—Q. Can you state whether  
26 or not it is in general use by companies engaged in carrying on business of transmitting electricity in high voltage over wires?

A. Not in use except by the present company, the Pacific Power Company, or the Nevada-California Power Company, to my knowledge.”

Defendant objected to this question and answer on the same grounds as were urged to the prior question and answer, and on the further ground that it called for the opinion of the witness as to what constituted general use, and required him to testify outside of his own experience, and that anything out-  
side of his own experience would be hearsay  
27 upon the question of general use. Said objection was overruled, and the defendant then and there duly excepted thereto, which ruling the defendant now assigns as error on the part of the trial Court.

XIV.

That during the examination of said witness, the following question was propounded:

“Mr. CURLER.—Q. If this arrester were constructed as was the one shown you in the picture, is it not a fact that the horns [46] would curve from here—from the line up here?



A. That would have to be above those, according to that diagram there, in regard to the arc, showing a break in the arc above the line, according to this cut here; it is relative to the position of the framework on which it is constructed; you have to make the connections from the line to your frame in order to clear your horn gaps.”

Defendant objected to this question and answer as leading and suggestive, which objection was overruled, and the defendant then and there excepted thereto, which ruling the defendant now assigns as error on the part of the trial Court.

### XV.

That during the examination of said witness, the following proceedings were had and taken:

“Q. Now what was the voltage at about half-past ten o'clock on the line at Wonder, as shown by the volt-meter there?”

Mr. CANNON.—Objected to on the ground it is incompetent, irrelevant and immaterial, because the controlling thing in this case is the voltage on this particular live wire on the arrester; and we contend there is a vital difference from the voltage at Wonder and on the main line.

Mr. GEDNEY.—“They can show the difference.

Mr. CANNON.—I think they ought to show the voltage at that particular place.

Mr. CURLER.—We cannot show it all at once; that depends on the voltage on the main wire.

The COURT.—You may ask the question. I presume you will follow it up?

Mr. GEDNEY.—Yes.

A. Approximately fifty-five thousand volts between wires.”

That the action of the Court in overruling said objection and allowing said question to be answered was thereupon duly excepted to, and action of said Court is here assigned as [47] error.

XVI.

The following question was then propounded to the witness, and the following proceedings were had and taken:

“Q. If the volt-meter at Wonder showed  
31 fifty-five thousand volts, the volt-meter at Fairview would show practically the same voltage?

Mr. CANNON.—I object to that on the ground no foundation has been laid for the question. If counsel will concede that Mr. Halpenny is an expert on this subject, I will withdraw my objection; otherwise I think they should prove that he is an expert.

Mr. GEDNEY.—I hardly think that is a question for an expert.

Mr. CANNON.—It is a pure matter of opinion, that can only be answered by an expert.

The COURT.—Read the question.

(The reporter reads the question.)

32 The COURT.—Well, if he says he knows, I will allow him to answer it.

A. You understand this would not be read directly fifty-five thousand, the meter would not indicate that; you would have to take account of the transformer ratios, between the one hundred and ten volts



which the meter would indicate, and the potential on the line. Considering that is understood, the meters would indicate very nearly the same.”

That the action of the Court in overruling said objections and allowing said question to be asked and answered was thereupon duly excepted to, and is here assigned as error.

### XVII.

33 That during the trial of said action, J. G.

Scrugham was called as a witness on behalf of the plaintiff, and was asked the following question:  
[48]

“Q. Basing your answer upon your technical knowledge and experience, state whether or not a lightning-arrester with the live arm of the lightning-arrester within five feet nine inches of the ground is a safe construction?

A. I do not regard it as a safe construction.”

That defendant objected to this question and answer on the ground it was incompetent, irrelevant, immaterial, no foundation laid for it, not a  
34 proper subject for expert testimony, and outside of the issues of the case, which objection was overruled and the defendant then and there duly excepted thereto, which ruling the defendant now assigns as error.

### XVIII.

Thereafter the following proceedings were had and taken:

“Mr. CURLER.—Q. Assuming that the lines were carrying fifty-five thousand volts of electricity, as between two of the lines, and the voltage between

the live end of the lightning-arrester and the ground, was thirty-two to thirty-three thousand volts, how near to the live arm of the lightning-arrester  
35 would a person have to come before he would receive a discharge?

A. Under normal conditions, approximately an inch and three-quarters, under abnormal conditions, it might jump two, three or four inches, and so forth.

Q. What do you mean by abnormal conditions?

A. A voltage higher than normal between the line and the ground.

Mr. CANNON.—I move to strike out the answer as to any other distance than one and three-quarters inches, on the ground there is no testimony here as to abnormal conditions.

Mr. CURLER.—Not at the present time,  
36 if your Honor please, that may be true; but as to whether there was an abnormal condition or not may be deduced from other testimony that will be presented in this case.

Mr. CANNON.—It is outside of the issues.

The COURT.—I will allow it to stand.” [49]

Defendant thereupon moved to strike out the answer as to any other distance than one and three-quarters inches, on the ground that there was no testimony introduced prior thereto as to abnormal conditions, and because it was outside of the issues.

The Court allowed the answer to stand, to  
37 which the defendant then and there excepted, and the action of the Court is here assigned as error.



## XIX.

During the examination of said witness, the following question was propounded to him:

“Q. Suppose that Mr. Sheaff received eight electrical burns on the left shoulder and three electrical burns, one on the top of the right shoulder and two below that, on the back, from one discharge at this one occurrence, in your opinion how would you account for those several burns?

A. The number of burns was probably due to his falling—different surfaces of his body presented different points; the easiest path for  
38 the arc to travel through his body to the ground. We take two carbon points; two wires with an arc passing between them; that arc does not remain constant in one place; it travels usually upward; or, if there is no wind blowing, it may travel in various directions, depending on the air currents.”

Said question and answer were objected to by defendant on the ground it was incompetent, irrelevant and immaterial, no foundation laid for it, and entirely speculative, not the subject of expert testimony, and on the further ground that the witness had not qualified as an expert on the subject, and  
39 that it assumed that the plaintiff's electrical burns were received with one contact or at the same time, which objection was overruled and the defendant then and there excepted thereto, which ruling the defendant now assigns as error on the part of the trial Court. [50]

## XX.

During said trial Clifton Herring was produced as

a witness on behalf of the plaintiff and was asked the following question:

“Q. Does or does not a lineman furnish his own equipment or tools?

A. Usually he does.”

Said question and answer were objected to  
40 on the ground it was incompetent, irrelevant  
and immaterial, and on the further ground  
that it did not involve any question of custom with  
this defendant, or as to whether it was an invariable  
matter, or whether a person can be a lineman with-  
out these or not. The objection was overruled, and  
the defendant then and there duly excepted thereto,  
which ruling the defendant now assigns as error on  
the part of the trial Court.

## XXI.

During the examination of said witness, the follow-  
ing question was propounded to him:

“Q. State that conversation as near as you can re-  
member it.

41 A. Mr. Campbell remarked that it was  
criminal carelessness to build an arrester with  
the horns so close to the ground; that the average  
man could easily come in contact with it; and Mr.  
Halpenny remarked that he felt it was not safe, but  
Mr. Poole had instructed him to go ahead and build  
an arrester with what material he had, and he had  
to protect the lines from lightning, and as soon as he  
could get the other arrester there it would be in-  
stalled in its place.”

Defendant objected to this question and answer on



the ground it was incompetent, irrelevant,  
42 immaterial and hearsay. The objection was  
overruled and the defendant then and there  
duly excepted thereto, which ruling the defendant  
now assigns as error on the part of the trial Court.  
[51]

## XXII.

During the examination of said witness, the following question was propounded to said witness:

“Q. And you were a four dollar a day man, were you not? A. No, not then.”

The Court of its own motion struck out said testimony with reference to the four dollars a day, and the answer also, over the objection of defendant.

Said action of the Court was then and there  
43 duly excepted to, which ruling the defendant  
now assigns as error on the part of the trial  
Court.

## XXIII.

Thereafter during the examination of said witness, the following proceedings were had and taken:

“The COURT.—I have been unable to find anything in the direct examination of this witness with reference to his wages and the capacity in which he was employed. When the question was asked Mr. Gedney objected to it on the ground it was not within the issue, and not cross-examination. That question  
and answer will be stricken out. And this last  
44 question, ‘And you were a four dollar a day  
man,’ and the answer ‘Not then’ will be  
stricken out. Both questions and answers will be  
stricken out as not a part of the cross-examination.”

The action of the Court was then and there duly excepted to, which ruling the defendant now assigns as error on the part of the trial Court.

XXIV.

That during the trial of said action, Dr. George M. Gardner was produced as a witness on behalf of the plaintiff, and during his examination the following proceedings were had and taken:

45       “(Witness continuing.) The effect on the nerves and blood vessels in that foot has been a lack of sensation in the scar [52] tissue right here (showing on the foot of plaintiff), right around in this region. On the top of the foot, the extensor surface is also anaesthetized; you can take and stick a pin in it. Do you want me to stick it in?”

Mr. CURLER.—No, never mind.

The WITNESS.—You cannot hurt it any way.

(Witness continuing.) I find the tendon of Achilles solid. Outside of the contraction; it  
46       is all there. That tendon is very inelastic now.

That which you showed me is a photograph. I know this is a photograph of Mr. Sheaff's back. It was taken on September 6th, 1911. That is a fair representation of the appearance of the right shoulder of Mr. Sheaff's back at that time. I was present when the photograph was taken.

Mr. CURLER.—We offer it in evidence.

Mr. CANNON.—No objection.

The COURT.—Have you others?

Mr. CURLER.—Yes.

The COURT.—Hand them all to counsel, and the



one you wish the jury to look at may be passed around now.

Mr. CURLER.—Have you any objection to those photographs?

47 Mr. CANNON.—Yes, I have an objection to these photographs in this, that apparently they are photographs of parts of the body, and with bandages and other evidences of treatment by physicians; in other words that it don't purport to show the bare evidence, without regard to the dressings, or whatever has been done by the physician, or others, in connection with it. I did not object to the other photograph, because it presented the bare back, but these photographs present some surgical conditions in connection with them, and I therefore ob-  
48 ject on those grounds; and on the additional ground that they can serve no useful purpose in this case, other than create some sympathetic consideration. [53]

The COURT.—The objection will be overruled."

Said action of said Court was then and there duly excepted to, and said action is here assigned as error.

## XXV.

That thereafter, during the examination of said witness, the following proceedings were had and taken:

“(Witness Continuing.) These photographs were all taken on the sixth day of September, 1911. I was present at the time. They are fair representations of what they purport to show as it appeared at that time.

49 Mr. CURLER.—I think I will have these marked separately.

Mr. CANNON.—Are you going to offer them separately, or have you offered them yet?

Mr. CURLER.—I offer them all in evidence, and I offer them separately so as to designate each one for the purposes of the record.

Mr. CANNON.—I object to each and all of these photographs being admitted in evidence; and object to each of them on each and all of the grounds heretofore stated.

The COURT.—The objection will be overruled.”

Said photographs were marked “Plaintiff’s  
50 Exhibits Nos. 4-5-6-7 and 8, respectively, and shown to the jury.

The admission of said photographs in evidence was thereupon duly excepted to, and is hereby assigned as error.

## XXVI.

That thereafter during said trial, the following proceedings were had and taken:

“Mr. CURLER.—Then we offer, if your Honor please, the mortality table, the American Mortality Table, and particularly, the expectancy table, insured lives, constructed from the mortality table, and found on page 482 of the book, designated ‘Blue Book, Rates and Guarantees’ of the Equi-  
51 table Life Assurance Society, [54] being the same in all societies; and particularly that portion which shows the expectancy of life of a man twenty-six years of age.

Mr. CANNON.—We object to this, if your Honor



please, on the ground it is incompetent, irrelevant and immaterial; that there is nothing in the complaint which would raise an issue with respect to the expectancy of life of the plaintiff; that there is no allegation in the complaint with respect to earning capacity of the plaintiff to earn, the amount he had been earning, what he was earning at  
52 the time of his accident; and no claim in the complaint for lost earnings after the accident, up to the present time, or at any time in the future; that this character of testimony can only be relevant as being some evidence which the jury may take into consideration, and give whatever weight they determine it is entitled to, or none at all, as bearing upon the loss of future earnings on the part of the plaintiff; and there is no issue made in this complaint that I have been able to discover as to any loss of future earnings, or any loss of past earnings.

53 Mr. CANNON.—I would like to add also to my objection that these mortality tables are not admissible at all on a case of personal injuries, except in cases where there is a total incapacity to labor; where the evidence shows there is any capacity to labor, then they are not admissible.

The COURT.—Is that all?

Mr. CURLER.—I offer the Annuity Table, found on page 484.

The COURT.—And you offer also the table of Expectancy of Life.

Mr. CANNON.—We make the same objection on

each and all of the grounds stated to the offer  
54 of the Annuity Table. This is the first time  
in my experience a table like this has been  
offered; they generally content themselves with the  
offer of the Expectancy Table. [55]

Mr. CURLER.—I would like, if there is any question in the Court's mind on this subject, to produce some authorities.

The COURT.—Very well.

The COURT.—With reference to those annuity tables and the expectancy of life table, the annuity table will not be admitted, but the table of expectancy of life will be. There is no objection made to that as to its correctness?

55 Mr. CANNON.—No, but I did not require  
counsel to prove any foundation for its admissibility.

Mr. CURLER.—If your Honor please, I have mislaid the only table I have. Possibly counsel will admit that the expectancy of life of a man twenty-six years old is 38.1 years.

Mr. CANNON.—I think that is what it is. We note an exception to the ruling of the Court.

The COURT.—Let the exception be noted."

The action of the Court in allowing said expectancy table to be admitted is here assigned as error.

## XXVII.

56 That during the said trial, Charles H. Stone  
was produced as a witness on behalf of the plaintiff, and during his examination the following proceedings were had and taken:

"Mr. CURLER.—We desire to prove that the



shoe that the plaintiff wore when he was measured by Mr. Stone was the same shoe that he wore on his left foot the day of the accident, and that it is in the identical condition now that it was at that time; in other words, that it has not been worn since that day.

Mr. CANNON.—If it is stated as a fact, I  
56 will not object to it on that ground, but simply object to it on the ground it is incompetent and irrelevant.

The COURT.—Then it is admitted to be true, provided it is competent. [56]

Mr. CANNON.—Provided it is relevant, material and competent.

The COURT.—Well, your objection will be overruled, and it will be admitted.”

The action of the Court in overruling said objection and admitting said testimony was then and there duly excepted to and said ruling of the Court is here assigned as error.

## XXVIII.

That thereafter, and after all of the testi-  
57 mony of plaintiff had been introduced and the plaintiff had thereupon rested, the *plaintiff* made his motion for a nonsuit and for a peremptory instruction of the jury requiring and directing the jury to return a verdict for the defendant on the ground that the complaint failed to state a cause of action; upon the ground that the evidence failed to prove the material allegations of the complaint; upon the ground that the evidence failed to show that the lightning-arrester described in the complaint and in the evidence was defective in the particulars alleged in the

complaint, or any of them, or defectively built  
58 or constructed or maintained, or that plaintiff  
tiff was injured by or through any such defect;  
upon the ground that the evidence failed to  
show that the defendant put the plaintiff at dangerous  
work, or that the plaintiff was inexperienced in the  
work in which he was placed or ignorant of its danger,  
or that the defendant knew or ought to have known  
of plaintiff's ignorance or inexperience, or that plaintiff  
was placed at any such work without any or sufficient  
warning or instruction, or that plaintiff was injured  
by or through any such matters or things; upon the  
ground that the evidence failed to show that plaintiff's  
injuries were proximately caused by or through any  
59 defect or defects of the lightning-arrester or its  
construction or maintenance; upon the ground that the  
evidence failed to show that the plaintiff's [57]  
injuries were proximately caused by any act or omission  
of the defendant in setting plaintiff at work or directing  
the work at the time and place complained of, or in  
failing to warn him of the dangers thereof, or in failing  
to instruct him as to his duties, or how to avoid the  
dangers thereof; upon the ground that the evidence failed  
to show that  
60 plaintiff's injuries were proximately caused by the  
negligence alleged in the complaint, if any; upon the  
ground that the evidence showed that the plaintiff's  
injuries were proximately caused by the separate,  
independent, intervening cause for which plaintiff was  
alone responsible; upon the ground that the evidence  
showed that the danger to



which plaintiff was exposed was incidental to his employment and that he assumed the risk of the same and the responsibility thereof; upon the ground that the evidence showed that the danger to which plaintiff was exposed was an open and obvious one;

that he was presumed to have known and appreciated the same; and that he therefore  
61 assumed the risk thereof; upon the ground that the evidence showed that the danger to which plaintiff was exposed was one which should have been observed and avoided by a person of plaintiff's experience, knowledge, intelligence and capacity, and that plaintiff therefore assumed the risk thereof; upon the ground that plaintiff was an experienced workman and that the dangers to which he was exposed in and about the place he was set at work were such only as were incidental to his em-  
62 ployment, and should have been observed and avoided by him, and that he assumed the risk thereof; upon the ground that the plaintiff did know and appreciate the dangers to which he was exposed, and that he therefore assumed the risk thereof; upon the ground that the plaintiff assumed the risk of the dangers to which he was exposed in this, to wit: That upon completing his work of digging the hole in question, he voluntarily chose an unsafe, insecure and highly dangerous way to [58] leave his place of work and the enclosure surrounding the same, which way was known or ought to have been known to him to be dangerous, instead of  
63 a perfectly safe way of which he fully knew; upon the ground that the evidence failed

to show whether the plaintiff's injuries were caused by plaintiff's coming into actual contact with a live wire of the defendant, or the electricity jumping from such live wire to the plaintiff's body, while his body or any part thereof was within one and three-quarters or one and seven-eighths inches from such wire, or while plaintiff's body was within four and one-quarter or four and one-half inches from each

live wire, or by coming into contact with or  
64 near the dead side of the lightning-arrester while it was carrying an overload or surge,

from any cause, or whether there was any overload or surge, or what was the cause of such overload or surge, if any, and that, therefore, negligence of the defendant was not proved, and the causal connection between the negligence alleged, if any, and the injury, was not proved, but was merely speculative; upon the ground that plaintiff's injuries were proximately caused by his own contributory negligence; upon the ground that plaintiff's injuries were proximately contributed to by his own negligence; upon the

ground that the plaintiff's injuries were proximately caused or contributed to by his failure  
65

to exercise ordinary care to avoid injury to himself; upon his failure to heed the warning of danger given by the fence around the lightning-arrester and by the danger signs upon the substation door and the switch-pole, both of which were or could have been observed by him by the exercise of ordinary care on his part, and by his failure to use ordinary care to keep away from the live wires in



the lightning-arrester when he knew, or ought  
66 to, in the exercise of reasonable care, to have  
known, by the purring of the transformers,  
and other facts and circumstances then known to  
him, that said wires were [59] alive and carry-  
ing a high voltage, and by his voluntary action in  
coming into close proximity or in contact with said  
live wires, when he could have departed from said  
enclosure by another and perfectly safe route then  
known to him, and by his failure in other respects  
to exercise the care imposed on him by law in view  
of his age, experience, intelligence, capacity and  
powers of observation; also upon the ground that  
the accident to the plaintiff could not have  
67 been reasonably foreseen or anticipated by  
the defendant.

Defendant hereby refers to the bill of exceptions  
heretofore filed in this cause, and prays that for the  
purpose of pointing the error here complained of,  
the same be considered herein incorporated as fully  
as though herein reiterated *in haec verba*.

Said motion for the nonsuit was thereafter argued  
upon each and all of the grounds urged, whereupon  
the Court denied said motion for the nonsuit, to  
which ruling the defendant then and there  
68 excepted, and the action of the Court in deny-  
ing said motion for a nonsuit is here assigned  
as error.

## XXIX.

That during the trial of said action, P. W. Green-  
leaf was produced as a witness on behalf of the plain-  
tiff, and was asked the following question:

“Q. They are either connected or in the process of connection, are they not? A. I think they are.”

Defendant duly objected to said question and answer, and the Court overruled said objection, which action of the Court was then and there duly excepted to and is now assigned as error. [60]

XXX.

That during the trial of said action R. H. Halpenny was produced as a witness on behalf of defendant; said witness was asked the following question:

“Q. (By defendant.) State whether or not you placed Mr. Sheaff in charge of any construction work there, near or at the Wonder substation.”

Said question was objected to by plaintiff on the ground it was leading and called for the conclusion of the witness and not a statement of fact. The Court sustained said objection, and to the ruling of the Court the defendant then and there excepted, which action is here assigned as error.

XXXI.

That during the examination of said witness, the following question was propounded:

“Q. Was there any agreement or understanding there that he was to act as a lineman?”

A. Not at that time.”

Said question was objected to on the ground that it called for the opinion and conclusion of the witness. Said objection was overruled by the Court, and then and there duly excepted to, and is hereby assigned as error.

XXXII.

That during the examination of said witness, the



following question was propounded to him:

“Q. An ordinary man looking at that thing  
71 could not tell whether that was cracked or not,  
could he? I want just to get at what the  
insulator is, that is all.

A. By looking at it he might or might not.”

Said question and answer were thereupon objected to by defendant and said objection overruled by the Court. To the action of the Court in overruling said objection, defendant [61] then and there duly excepted, and said exception is here assigned as error.

### XXXIII.

That during the examination of said witness, defendant was asked the following question:

72 “Q. If that man left his station would there  
be any control or regulation?

A. The amount of current was not regulated there directly.”

That defendant objected to the last question and answer as conjectural, incompetent, irrelevant, immaterial, outside of the evidence, which objection was overruled and defendant then and there duly excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

### XXXIV.

That during the examination of said witness, the following question was propounded to him:

73 “Q. Now, if there was a sudden throwing  
off of power, and that man didn't immediately  
regulate that needle valve, it would cause a surge on

the line, would it not?

A. Under the conditions then I would not say it would cause a surge; the loads were not heavy enough."

That defendant objected to the said question and answer as incompetent, irrelevant, immaterial and outside of the issues, which objection was overruled, and the defendant then and there excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

XXXV.

That during the examination of said witness, the following question was propounded to him:

74 "Q. If there was a surge on this line, caused by the sudden falling off of power, it would make this handle here a [62] dangerous thing to have hold of, wouldn't it, by reason of the fact that it might break one of the insulators?

A. It would be very remote."

That defendant objected to said question and answer as incompetent, irrelevant, immaterial and outside of the issues, which objection was overruled, and the defendant then and there duly excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

XXXVI.

75 That during the examination of said witness the following question was propounded to him:

"Q. Very remote, but it is possible, even probable, isn't it? A. No, not probable by any means."



The defendant objected to said question and answer on the ground it was incompetent, irrelevant, immaterial, and outside of the issues, which objection was overruled, and the defendant then and there excepted thereto. The action of the Court in allowing said question to be asked and answered, and in overruling said objection, is here assigned as error.

### XXXVII.

76 That during the examination of said witness, the following question was propounded to him:

“Q. And that would make this handle a dangerous contrivance, would it not?”

A. It might be considered dangerous.”

That defendant objected to said question and answer as immaterial, incompetent, irrelevant, and outside of the issues. The objection was overruled, and defendant then and there duly excepted thereto, which ruling the defendant now assigns as error, on the part of the trial Court.

### XXXVIII.

That during the examination of said witness, the following question was propounded to him: [63]

77 “Q. Then when you took the tie wires off it would be a dangerous place, would it not?”

A. It would.”

That defendant objected to said question and answer as calling for the opinion and conclusion of the witness, which objection was overruled, and the defendant then and there duly excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

XXXIX.

That during the examination of said witness, the following question was propounded to him.

“Q. Then you did not consider that Mr. Sheaff was competent or capable of taking care of  
78 himself in putting on the wire, did you?

A. I considered him perfectly competent to do that.”

That defendant objected to said question and answer on the ground that he was not directed to do anything of that kind, and therefore the question as to whether he thought he was competent to do that or not was incompetent, irrelevant and immaterial to any issue in the case, which objection was overruled, and the defendant then and there duly excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

XL.

79 That during the examination of the witness, the following question was propounded to him:

“Q. Would you consider it safe for you, yourself, to work upon a wire carrying seventeen thousand volts, upon a pole down by Fairview or Wonder?

A. I would consider it safe under certain conditions.”

The defendant objected to said question and answer as incompetent, irrelevant and immaterial and having nothing to do with the competency or incompetency of Mr. Sheaff, which objection [64] was overruled, and the defendant then and there



excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

80

## XLI.

That during the examination of said witness, the following question was propounded to him:

“Q. Did you in the dining room at Mrs. Adams Hotel on the morning of the 18th day of July, 1911, between the hours of six and eight o’clock, when Mrs. Adams and this young lady who was the waitress were present, say to them ‘Did Bill go?’, and upon being answered in the affirmative, did you not say to them ‘I should have gone to Fairview myself  
81 instead of sending Bill,’ and did one of them ask you why, and did you then say ‘Well, Bill is not an experienced electrician and I am afraid he is not capable of doing that work.’

A. I don’t remember any such conversation.”

Defendant objected to said question and answer as incompetent, irrelevant, immaterial, outside of the issues, no foundation laid for the question, and upon the further ground that the place, persons present, and the person who is supposed to have made the remark or joined in the conversation, was not definitely stated in the question, which objection was over-  
ruled, and the defendant then and there duly  
82 excepted thereto. That the court erred in allowing said witness to answer said question, and in overruling said objection.

## XLII.

That during the trial of said action, Charles O. Poole was produced as a witness on behalf of the de-

defendant and was asked the following question:

“Q. And do you regard that construction—I will ask you the general question: State whether or not you regard this construction as it appears here in this model, with the fence around it, built with the live wire five feet nine inches from [65] the ground, and with danger signs reading ‘Danger, high  
83 voltage, keep out’ on one of the switch posts—state whether or not you regard that as a reasonably safe construction?”

That plaintiff objected to the question on the ground it was incompetent and a question for the jury, which objection was then and there duly sustained by the Court over defendant’s objection. To the ruling of the Court the defendant then and there duly excepted, and the action of the Court is here assigned as error.

#### XLIII.

During the examination of said witness, the following question was propounded to him:

84 “Q. If that was a fact would that alter your conclusion as to saying whether or not this is an ordinary and usual construction?

A. It would not make any difference in my conclusion.”

That defendant objected to said question and answer on the ground that it assumed a fact not in evidence, which objection was overruled, and the defendant then and there duly excepted thereto. That the Court erred in allowing said witness to answer said question, and in overruling said objection.



## XLIV.

That during the examination of said witness, the following question was propounded to him:

85       “Q. If it is a fact that that was cut off, that pole was cut off five feet, then there would be no reason why that five feet could not have been left on that pole and this switch been made that five feet higher, would there?”

A. It need not have any bearing whatever on the height of the switch.”

That defendant objected to said question and answer as assuming a fact not in evidence, incompetent, irrelevant and immaterial, which objection was overruled, and the defendant then and there excepted thereto. That the Court erred in allowing  
86       [66]   said witness to answer said question and in overruling said objection.

## XLV.

That during the trial of said action, Mrs. V. L. Adams was produced as a witness on behalf of plaintiff, and was asked the following question:

“Q. And did Mr. Halpenny then remark ‘I should have gone to Fairview myself instead of sending Mr. Sheaff?’       A. Yes, sir.”

That defendant objected to said question and answer as incompetent, irrelevant, immaterial, and uncontradictory of the testimony of the witness Halpenny. The Court overruled said objection, and defendant duly excepted thereto. That the Court erred allowing said question to be asked and answered  
87       and in overruling said objection.

XLVI.

During the examination of said witness, the following question was propounded to her:

“Q. And did Mr. Halpenny then say ‘Well, Bill is not an experienced electrician and I am afraid he is not capable of doing that work?’ A. Yes, sir.”

That defendant objected to said question and answer as incompetent, irrelevant, immaterial, uncontradictory testimony of the witness, and on the further ground that no foundation had been laid for it, which objection was overruled, and the defendant then and there excepted thereto. That the  
88 Court erred in allowing said witness to answer said question, and in overruling said objection.

XLVII.

That during the trial, Mr. V. L. Adams was produced as a witness for the plaintiff on rebuttal, and was asked the following question: [67]

“Q. At that time and place did Mr. Halpenny say he was sorry Mr. Sheaff was hurt, and then say ‘I felt this morning I should not have sent him over there?’ A. Yes, sir.”

Defendant objected to said question and answer as incompetent, irrelevant, immaterial, uncontradictory of the witness, the witness not having any recollection upon the subject at all, and simply a  
89 matter of an expression of solicitude and regard, but no objection was urged as to whether the language was the same or not. The objection was overruled, and the defendant then and there excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.



## XLVIII.

Thereafter, during the trial of said action, the following proceedings were had and taken:

“Mr. CURLER.—If your Honor please, since that matter has been settled, under that amendment we now ask to amend the fourth para-  
90 graph of our complaint by inserting therein an allegation that the defendant knew that the plaintiff was inexperienced in electricity, and failed and neglected to warn or caution the plaintiff at the time they sent him to work upon the arrester.

The COURT.—Is there any objection?

Mr. CANNON.—Yes, your Honor, we object to that on the ground it would be setting up an entirely new cause of action, one that we have not been brought into Court upon; one that the defendant has not been served with, and if such an amendment  
91 should be allowed at this time, it would necessitate an application for a continuance. We have not tried our case upon that theory; we have not presented our testimony upon that theory. We have presented our testimony upon the theory of the construction of the complaint, and tried our case on such theory. To [68] allow such an amendment would compel us to demur to the complaint for setting up two causes of action in one count, and setting up different causes of action—duplicity in the complaint, because it is under all the decisions, a separate and distinct cause of action, based upon separate and distinct principles of construction.

(Argument.)

92 The COURT.—I will allow the amendment.”

The action of the Court in allowing said amendment was thereupon duly excepted to, and is here assigned as error.

#### XLVIX.

That during the said trial, P. R. Sheaff was produced as a witness in his own behalf in rebuttal, and was asked the following question:

“Q. Mr. Sheaff, while you were working around the substations at Fairview and Wonder with Mr. Halpenny, did Mr. Halpenny ever say to you, ‘Sheaff, remember that wire is alive’ or anything of that nature?     A. No.”

93     The defendant objected to said question and answer as not rebuttal which objection was overruled, and the defendant then and there excepted thereto. That the Court erred in allowing said witness to answer said question and in overruling said objection.

#### L.

That thereafter the following proceedings were had and taken:

“Mr. CANNON.—If the Court please, I wish to make anew, and renew the motion heretofore made for a peremptory instruction to the jury, and requiring the jury to return a verdict in favor of defendant; and as the grounds of the motion, I wish to set forth and rely upon each and all of the  
94     grounds heretofore stated on the motion originally presented. I presume it will not [69] be necessary for me to repeat them at this time, but it will be understood that the motion is remade and renewed upon each and all of the grounds heretofore



stated; and I wish to make this motion, of course, as appearing at the close of the testimony, and upon the settlement of the pleadings; and do not wish to be considered as waiving the motion for a continuance, if we decide to insist upon it. I do not think  
95 it is necessary to reargue the motion, because your Honor is familiar with the evidence brought in, and whether it in any manner affects your Honor's judgment in relation to the case.

The COURT.—You wish this considered as made at the time the instructions are requested, and it will be overruled.

Mr. CANNON.—At the proper time, yes.

The COURT.—At the proper time, and it will be considered as made whenever you wish it. The ruling will be the same and you may have the same exception that was made to the previous ruling.”

Defendant now refers to the bill of excep-  
96 tions heretofore filed in this cause and prays, that for the purpose of pointing the error herein complained of, the same may be considered herein incorporated in its entirety as fully as though herein reiterated *in haec verba*.

“Mr. CANNON.—I presume it may be understood, if the Court please, that the motion referred to the other day, shall be deemed to have been made at this time.

The COURT.—It will be deemed to have been renewed and overruled, and the same exception allowed.”

The action of the Court in denying defendant's said

97 motion for a directed verdict was then and there duly excepted to, and is here assigned as error. [70]

## LI.

Prior to the argument to the jury, the defendant duly requested in writing that the Court should give to the jury the following instruction (the same being numbered 3 of the instructions requested by the defendant):

“You are instructed that the only cause of action, which the plaintiff is entitled to have submitted to you for consideration, is based upon the charge that the defendant sent the plaintiff to work at a place which was not reasonably safe in view of the unusual or extraordinary risks incident thereto, if any  
98 there was. You are, therefore, further instructed that if you find from the evidence that the place to which plaintiff was sent to work was a reasonably safe place, as that expression or term is hereinafter defined, your verdict must be in favor of the defendant, Pacific Power Company.”

The Court refused said request, but modified said instruction, to which defendant called the Court's attention, duly excepted, and now assigns as error No. 51.

That the Court erred in refusing to give said instruction to the jury.

## LII.

99 Prior to the argument to the jury, the defendant duly requested in writing that the Court should give to the jury the following instruction (the same being numbered 4A of the in-



structions requested by the defendant):

“The complaint does not allege that the plaintiff was unfamiliar with or ignorant of the ordinary duties of an electrician’s helper, and does not allege that the plaintiff was ignorant of the ordinary risks and dangers of his employment as an electrician’s helper. You are, therefore, instructed that it must be taken as an admitted fact in this case, so far as the charges of negligence against the defendant are concerned, [71] that the plaintiff was fam-  
 101 iliar with the ordinary duties of an electrician’s helper and comprehended all of the usual and ordinary risks and dangers attending the said employment,” which request was refused, and to which defendant called the Court’s attention and duly excepted, and now assigns the same as error No. 52.

That the Court erred in refusing to give said instruction to the jury.

#### LIII.

Prior to the argument to the jury, the defendant duly requested in writing that the Court should give to the jury the following instruction (the same being numbered 4B of the instructions requested by  
 102 the defendant):

“The complaint does not allege that the plaintiff was unacquainted with or ignorant of all of the dangers incident to the work of a journeyman lineman and electrician, but does state that the plaintiff was unacquainted with and ignorant of the dangers incident to the work of a journeyman lineman and electrician upon and near wires or appa-

ratus carrying electric current of high voltage and potential energy. You are instructed, therefore, that in so far as the charges of negligence against the defendant are concerned, it must be taken as  
103 an admitted fact in the case that the plaintiff was acquainted with and not ignorant of any of the dangers incident to the work of a journeyman lineman and electrician, excepting upon near wires or apparatus carrying electric current of high voltage and potential energy. As to all other matters relating to such duties and dangers he must be deemed, in so far as negligence against the defendant is concerned, to have had knowledge of such dangers," which request was refused, and to which ruling the defendant called the Court's attention and  
104 duly excepted and now assigns the same as error No. 53.

That the Court erred in refusing to give said instruction to the jury. [72]

#### LIV.

That prior to the argument to the jury, the defendant duly requested in writing that the Court should give to the jury the following instruction (the same being numbered 4C of the instructions requested by the defendant):

"The complaint, as amended, charges as one of the alleged defects of the lightning-arrester that it was placed or constructed too close to the substation building. You are instructed that the evidence fails to sustain this charge, and you will, therefore,  
105 ignore it in arriving at your verdict," which request was refused, and to which ruling the



defendant called the Court's attention and duly excepted, and now assigns the same as error No. 54.

That the Court erred in refusing to give said instruction to the jury.

#### LV.

Prior to the argument to the jury, the defendant duly requested in writing that the Court should give to the jury the following instruction (the same being numbered 5 of the instructions requested by the defendant):

“Certain evidence has been admitted in the case with respect to the question as to whether or  
 106 not the defendant warned the plaintiff as to the danger attending the work, upon which he was engaged at the time of the accident, if any, and whether the defendant instructed him as to how to avoid such danger. In this connection you are instructed that the complaint does not set forth any cause of action against the defendant based upon any alleged failure of the defendant to give to the plaintiff any such warning or instruction, and you cannot, therefore, find the defendant guilty of negligence on that ground,” which request was refused, and to which ruling the defendant called the  
 107 Court's attention and duly excepted, and now assigns [73] the same as error No. 55.

That the Court erred in refusing to give said instruction to the jury.

#### LVI.

Prior to the argument to the jury, the defendant duly requested in writing that the Court should give to the jury the following instruction (the same being

numbered 5B of the instructions requested by the defendant):

“Although the place to which an employee is sent to work may be actually dangerous, it may, notwithstanding, be a reasonably safe place to work within the meaning of the law relating to the duty of  
108 an employer toward his employee. Some occupations are essentially dangerous, and some places where employees are obliged to work are essentially dangerous, but it does not follow that an employer is negligent in sending an employee to work in such dangerous place. Dangerous work, such as working about electricity, is lawful and must be done. Therefore, an employer has a right to set an employee at such work or to direct him to work in a dangerous place, and an adult employee, who accepts such work, takes upon himself the risk of the ordinary dangers incident thereto. The greater the risk and  
109 danger of the particular work or the particular place, the greater is the risk which the employee assumes. It is only concealed and latent dangers, or dangers of which he does not or should not know and appreciate the risk, for which the employee does not assume the responsibility. Therefore, if an employee is sent to work in a dangerous place, but the dangers, even though great, are open, plain, and obvious, and such as are or should be known to an adult person of ordinary intelligence and capacity, such place is under the law a reasonably  
110 safe place to work, and the employer is not responsible for any injury that may be sus-



tained by the employee by reason of such dangers.”  
[74]

The Court refused to give said instruction as requested, but modified the same, and the Court’s action in modifying the same and in refusing to give the following parts thereof:

“It is only concealed and latent dangers, or dangers of which he does not or should not know and appreciate the risk, for which the employee does not assume the responsibility.” “If an employee is sent  
111 to work in a dangerous place, but the dangers,  
even though great, are open, plain and obvious and such as are or should be known to an adult person of ordinary intelligence and capacity, such place is under the law a reasonably safe place to work,”—was called to the Court’s attention, duly excepted to and is here assigned as error No. 56.

That the Court erred in modifying said requested instruction and in refusing to give the jury the same in its entirety.

#### LVII.

Prior to the argument to the jury, the defendant duly requested in writing that the Court should  
112 give to the jury the following instruction (the  
same being numbered 5C):

“If you find that the defendant sent the plaintiff to work in a place which was actually dangerous, but the danger thereof was open and obvious and should have been known and appreciated by him, I instruct you that the place to which he was sent was reasonably safe, and his employer cannot be held responsible for injuries suffered by him or

through or on account of such dangers”—which request was refused, and to which ruling the defendant then and there called the Court’s attention and  
113 duly excepted to and now assigns the same as error No. 57.

That the Court erred in refusing to give said instruction to the jury. [75]

### LVIII.

Prior to the argument to the jury, the defendant duly requested in writing that the Court should give to the jury the following instruction (the same being numbered 15 of the instructions requested by the defendant):

“You are instructed that the danger attending the employment of the plaintiff at the time of his injury was open, latent and obvious and such as should have been known and appreciated by an adult person of ordinary intelligence, experience and capacity.

114 This being so he assumed all the risks thereof, and your verdict must, therefore, be in favor of the defendant”—which request was refused, and to which ruling the defendant called the Court’s attention and duly excepted to, and now assigns the same as error No. 58.

That the Court erred in refusing to give said instruction to the jury.

### LIX.

Prior to the argument to the jury, the defendant duly requested in writing that the Court should give to the jury the following instruction (the same being numbered 5C of the instructions requested by  
115 the defendant):

“The plaintiff does not demand in his com-



plaint any damages for estimated loss of earnings or earning power in the future. You will, therefore, in the event that you find a verdict in his favor, allow him nothing as damages for loss of earnings or earning power in the future. Not having demanded any such damages he cannot recover them in this action"—which request was refused, and to which ruling the defendant called the Court's attention and excepted to, and now assigns the same as error No. 59.

116 That the Court erred in refusing to give said instruction to the jury. [76]

LX.

That after judgment was entered in said action, and within the time allowed by law, and the orders of Court, to wit, on the 12th day of January, 1914, defendant duly made, served and filed its petition for new trial; that thereafter orders of the Court were duly made and filed extending the time for hearing the argument and for determination of said petition for new trial until the next term of said court, and thereafter continued from motion  
117 day to motion day until October 24th, 1914, at which time defendant's motion for a new trial was argued and submitted by respective counsel, whereupon the Court on said 24th day of October, denied defendant's said motion for a new trial, to which ruling the defendant then and there duly excepted, and the action of the Court in denying defendant's said petition for a new trial is hereby assigned as error.

**Assignment of Insufficiency of the Evidence.**

Defendant now specifies the following grounds of insufficiency of the evidence to support or sustain the judgment or verdict:

1. The evidence was and is insufficient to establish or sustain, and the evidence fails to  
119 establish or sustain the material allegations of the complaint, or any of them.

2. The evidence was and is insufficient to establish or sustain, and the evidence fails to establish or sustain that the lightning-arrester described in the complaint was defective in the particulars alleged in the complaint, or in any of them, or in any particular whatsoever, or defectively built or constructed or maintained, or that plaintiff was injured by or through any such defect.

3. That the evidence was and is insufficient  
120 to establish or sustain, and the evidence fails to establish or sustain the allegation that plaintiff was put to work at dangerous [77] work, or that plaintiff was inexperienced in the work at which he was placed or ignorant of the dangers thereof, or that defendant knew or ought to have known of plaintiff's ignorance or inexperience, or that plaintiff was placed at any such work without any or sufficient warning or instruction, or that plaintiff was injured by or through any of such matters or things.

4. That the evidence fails to show or establish



that plaintiff's injuries were proximately  
121 caused by or through any defect or defects in  
the lightning-arrester or in the maintenance  
or construction thereof.

5. That the evidence fails to show or establish  
that plaintiff's injuries were proximately caused by  
any act or omission of the defendant in setting plain-  
tiff at work or directing the work at which time and  
place complained of, or in failing to warn him as to  
the dangers thereof, or in failing to instruct him as to  
his duties or how to avoid the danger thereof.

6. That the evidence fails to show or establish  
that plaintiff's injuries were proximately  
122 caused by the negligence alleged in the com-  
plaint, if any.

7. That the evidence shows that the plaintiff's  
injuries were proximately caused by a separate, in-  
dependent, intervening cause, for which plaintiff was  
alone responsible.

8. That the evidence shows that the danger to  
which plaintiff was exposed was incidental to his  
employment; and that he assumed the risk of the  
same, and the responsibility therefor.

9. That the evidence shows that the danger to  
which plaintiff was exposed was an open and obvious  
one; that he is presumed to have known and appre-  
ciated the same, and that he therefore assumed the  
risk thereof.

123 10. That the evidence shows that the dan-  
ger to which plaintiff was exposed was one  
which should have been observed and avoided by a  
person of plaintiff's experience, knowledge, [78]

intelligence and capacity, and that plaintiff therefore assumed the risk thereof.

11. That the evidence shows that plaintiff was an experienced workman, and that the dangers to which he was exposed in and about the place he was set at work, were such only as were incidental to his employment, and should have been observed and avoided by him, and that he assumed the risk thereof.

124      12. That the evidence shows that the plaintiff did know and appreciate the dangers to which he was exposed, and that he therefore assumed the risk thereof.

13. That the evidence shows that the plaintiff assumed the risk of the dangers to which he was exposed in this, to wit, that upon completing his work of digging the holes in question, he voluntarily chose an unsafe, insecure and highly dangerous way to leave his place of work, and the enclosure surrounding the same, which way was known or ought to have been known to him to be dangerous, instead of

125      a perfectly safe way, of which he fully knew,

14. That the evidence fails to show whether the plaintiff's injuries were caused by plaintiff's coming into actual contact with a live wire of the defendant, or by the electricity jumping from such live wire to plaintiff's body, while his body, or any part thereof, was within one and three-quarters or one and seven-eighths inches from such wire, or while plaintiff's body was within four and one-quarter or four and one-half inches from such live



wire, or by coming into contact with or near  
126 the dead side of the lightning-arrester while  
it was carrying an overload or surge from any  
cause, or whether there was any overload or surge, or  
what was the cause of such overload or surge, if any,  
and that, therefore negligence of the defendant is not  
proved, but is merely speculative, and the casual  
connection between the negligence alleged, if any,  
and the injury, [79] is not proved, but is merely  
speculative.

15. That the evidence shows that the plaintiff's  
injuries were proximately caused by his own con-  
tributory negligence.

16. That the evidence shows that the plaintiff's  
injuries were proximately contributed to by his own  
negligence.

127 17. That the evidence shows that the plain-  
tiff's injuries were proximately caused or con-  
tributed to by his failure to exercise ordinary care  
to avoid injury to himself, by his failure to heed the  
warning of danger given by the fence around the  
lightning-arrester, and the danger signs upon the  
substation door and the switch-pole, both of which  
were, or could have been observed by him by the ex-  
ercise of ordinary care upon his part, and by his  
failure to use ordinary care to keep away from  
128 the live wires in the lightning-arrester, when  
he knew, or ought, in the exercise of reason-  
able care, to have known, by the purring of the  
transformers, and other facts and circumstances  
then known to him, that said wires were alive, and  
carrying a high voltage; and by his voluntary action

in coming into close proximity, or in contact with said live wire, when he could have departed from said enclosure by another, and perfectly safe route then known to him, and by his failure in other respects to exercise the care imposed on him by law in view of his age, experience, intelligence, capacity and powers of observation.

129        18. That the evidence shows that the accident to the plaintiff could not have been reasonably foreseen or anticipated by the defendant.

**Specifications of Particulars in Which the Verdict is  
Against Law.**

1. That the verdict is against law in each and every and all of the particulars in which it has been above specified that the evidence is insufficient to justify the verdict.

2. That the verdict is against law, inasmuch as there is no evidence of any negligence on the part of the defendant [80] contributed as a proximate cause to the accident and injury complained of by the plaintiff.

130        WHEREFORE, the said defendant, Pacific Power Company, a corporation, prays that the judgment of the District Court of the United States in and for the District of Nevada, entered herein in favor of the plaintiff and against the defendant, be reversed and that the said District Court of the United States in and for the District of Nevada be



directed to grant a new trial of said cause.

WILLIAM M. ABBOTT,  
WILLIAM M. CANNON,  
METSON, DREW & MacKENZIE,  
GEORGE A. BARTLETT,

Attorneys for Defendant.

[Endorsed]: No. 1571. In the District  
131 Court of the United States in and for the Dis-  
trict of Nevada. P. R. Sheaff, Plaintiff, vs.  
Pacific Power Company, a Corporation, Defendant.  
Assignment of Errors. Filed March 4th, 1915. T.  
J. Edwards, Clerk. Wm. M. Abbott, Wm. M. Can-  
non, George A. Bartlett, Attorneys for Defendant.  
[81]

---

*In the District Court of the United States, in and  
for the District of Nevada.*

No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Order Allowing Writ of Error and Fixing Amount of  
Supersedeas Bond.**

Upon the motion of George A. Bartlett, William  
M. Abbott and William M. Cannon, attorneys  
132 for defendant herein, made this 4th day of  
March, 1915, and upon the filing of said de-  
fendant's petition for the allowance of a writ of

error intended to be urged by defendant, and upon the filing of the assignments of error by defendant:

It is ORDERED, and the Court hereby ORDERS, that a writ of error be allowed, and that the amount of the supersedeas bond to be given by the defendant and upon said writ of error be, and the same is hereby fixed at the sum of Eighteen Thousand  
133 Five Hundred Dollars (\$18,500.00), and upon the giving of said bond all further proceedings in this court be suspended, stayed and superseded pending the determination of said writ of error by the United States Circuit Court of Appeal, in and for the Ninth Circuit.

Dated this 4th day of March, 1915.

E. S. FARRINGTON,

Judge. [82]

[Endorsed]: No. 1571. In the District Court of the United States in and for the District of Nevada. P. R. Sheaff, Plaintiff, vs. Pacific Power Company, a Corporation, Defendant. Order Allowing Writ of Error and Fixing Amount of Supersedeas  
134 Bond. Filed March 4th, 1915. T. J. Edwards, Clerk. Wm. M. Abbott, Wm. M. Cannon, George A. Bartlett, Attorneys for Defendant.  
[83]



*In the District Court of the United States for the  
District of Nevada.*

No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Supersedeas Bond on Writ of Error.**

KNOW ALL MEN BY THESE PRESENTS: That we, Pacific Power Company, a private corporation, defendant above named, as principal, and American Surety Company, a corporation created, organized and existing under and by virtue of the laws  
135 of the State of New York, as Surety, are held and firmly bound unto P. R. Sheaff, plaintiff above named, in the sum of Eighteen Thousand Five Hundred (\$18,500) Dollars, to be paid to said P. R. Sheaff, his executors or administrators, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and ours and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated this fourth day of March, 1915.

WHEREAS, the above-named defendant,  
136 Pacific Power Company, a private corporation, has sued out a writ of error to the United States Circuit Court of Appeals, in and for the Ninth Circuit, to reverse the judgment entered in the

above-entitled cause by the District Court of the United States, in and for the District of Nevada, in favor of the above-named plaintiff [84] and against the defendant therein for the sum of Fifteen Thousand Dollars (\$15,000.00) interest and costs,

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the above-named Pacific Power Company, a private corporation, shall prosecute said writ of error to effect and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void, otherwise to be and remain in full force and effect.

IN WITNESS WHEREOF, the said Pacific Power Company, a private corporation, and the American Surety Company, a corporation created, organized and existing under and by virtue of the laws of the State of New York, have caused these presents to be executed this fourth day of March, 1915.

PACIFIC POWER COMPANY,

By GEORGE A. BARTLETT,

Its Attorney-in-Fact.

AMERICAN SURETY COMPANY,

138 By GEORGE S. HALL,  
Resident Vice-President.

[Notarial Seal] Attest: ALBERT D. AYRES,  
Resident Assistant Secretary.

[Surety Company Seal] [85]

State of Nevada,  
County of Washoe,—ss.

On this 4th day of March, A. D. one thousand nine



hundred and fifteen, personally appeared before me, Frank J. Byington, a Notary Public in and for said Washoe County, Albert D. Ayres, known to me to be the resident assistant secretary of the corporation that executed the foregoing instrument, and upon oath, did depose that he is the officer of said corporation as above designated; that he is acquainted  
139 with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the County of Washoe, the day and year in this certificate first above written.

[Seal] FRANK J. BYINGTON,  
Notary Public in and for the County of Washoe,  
State of Nevada.

140 My commission expires June 5th, 1916. [86]  
State of Nevada,  
County of Ormsby,—ss.

On this fourth day of March, A. D. 1915, personally appeared before me, the undersigned, a Notary Public in and for the County of Washoe, State of Nevada, acting in Ormsby County, said State, Geo. A. Bartlett, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of Pacific Power Company, and he

duly acknowledged to me that he subscribed  
141 the name of the said Pacific Power Company  
thereto as principal, and his own name as at-  
torney in fact, freely and voluntarily, and for the  
uses and purposes therein mentioned.

[Seal]

JONATHAN PAYNE,

Notary Public.

The foregoing undertaking is hereby approved  
March 6, 1915.

E. S. FARRINGTON,

U. S. Dist. Judge.

[Endorsed]: No. 1571. In the District Court of  
the United States for the District of Nevada. P. R.  
Sheaff, Plaintiff, vs. Pacific Power Company, a Cor-  
poration, Defendant. Supersedeas Bond on Writ  
of Error. Filed March 6th, 1915. T. J. Edwards,  
Clerk. Wm. M. Abbott, Wm. M. Cannon, Geo. A.  
Bartlett, Metson, Drew & MacKenzie, of Attorneys  
for Defendant.

14205

8645

---

22850 [87]

---

*In the District Court of the United States, in and for  
the District of Nevada.*

No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.



**Bill of Exceptions.**

BE IT REMEMBERED, that the above-entitled cause came on regularly for trial in the above-entitled court on Wednesday, the tenth day of December, A. D. 1913, at ten o'clock A. M. of said day, before Honorable E. S. Farrington, Judge of said court, sitting with a jury, Messrs. Curler and Gedney appearing as attorneys for plaintiff,  
1 and Mr. William M. Cannon and George A. Bartlett appearing as attorneys for defendant; whereupon the following proceedings, and none other were had and taken:

The complaint and answer in the case were read to the jury by Mr. Curler and Mr. Cannon, respectively. The opening statement on behalf of plaintiff was thereupon made by Mr. Curler; defendant, through its counsel, reserving the right to make its opening statement at a later stage of the trial.

**[Testimony of P. R. Sheaff, the Plaintiff, in His Own Behalf.]**

Mr. P. R. SHEAFF, the plaintiff, called as a witness in his own behalf, being first duly sworn, testified as follows: [88]

Direct Examination by Mr. GEDNEY.

2 My name is Percy Richard Sheaff. I am the plaintiff in this case. I will be twenty-nine the first of next month. I was born in England. I first came to this country in 1902. I was only here about one day. The next time I came back was in 1904. I have not been in the United States per-

(Testimony of P. R. Sheaff.)

manently since that time. The last time I came to this country was in 1907. I have been in Canada, Alaska, New Zealand, Australia, and I have  
3 touched at the South Sea Islands. I am a steam stationary engineer. I received my education in England. I graduated from the grammar school and I was about four months in high school. I left school at the age of twelve years and four months. I received practically all my education in England. At that time I never received any instruction in electricity.

(By Mr. GEDNEY.)

“Q. Have you ever worked around electrical appliances? A. I have.  
4

Q. Where was the first time?

A. The first time was in Miller's, Nevada.

Q. What did you do there, Mr. Sheaff?

A. I worked in a power plant there.

Q. And what were your duties?

A. My duties—at one time I was foreman there, or at first, rather, I was oiler, and my duties were to keep the engines clean, and to oil the bearings of the engines.

Q. Of what kind of engines?

A. They were cross-compound Corliss, reciprocating engines.

Mr. CANNON.—(Q.) What was that?

A. Cross-compound Corliss engines? [89]

5 Mr. GEDNEY.—(Q.) Electric or steam engines?



(Testimony of P. R. Sheaff.)

A. They were steam engines, they were driven by steam.

Q. Driven by steam? A. Yes.

Q. What did you have to do with those engines?

A. I had to keep them clean, and oil the bearings.

Q. Were there any electrical appliances or any machinery there at Millers? A. Yes.

Q. What were they, do you know?

A. There were generators in the power-house; there were several electrical motors running different pumps, and there were some switchboards.

Q. Did you have any duties to perform in  
6 connection with that machinery at that time?

A. Yes.

Q. What was it?

A. Sometimes I would have to start the pump.

Q. How did you start that pump?

A. By throwing the starting switch.

Q. Simply a lever? A. Just a lever.

Mr. CANNON.—That is objected to as leading and suggestive.

Mr. GEDNEY.—I accept the objection. (Q.)  
How long were you there?

A. The first time? I have been there different times.

Q. You have been there different times?

A. Yes.

Q. Well, how long did you work there, altogether?

A. I could not tell offhand; I could figure it up.

I should say—let's see—somewhere about  
7 twenty-four months, I should judge.

(Testimony of P. R. Sheaff.)

Q. Twenty-four months. Now, about when was that, in what year?

A. I worked there about seven months in 1906, and then in 1907 I worked about from some time in April until about [90] the latter part of May, that would be about six weeks; and then I went back in 1908—and let me see how long I worked that time;

I think about, I think I worked about the  
8 — greater part of 1908 in Miller's—no, I didn't  
either; I worked about five months, I think.

I left there in the middle of the summer of 1908.

Q. Now, during any time that you worked at Miller's, did you have any further duties in connection with any electrical apparatus to perform?

A. No, sir; not that I remember.

Q. After you left Miller's, did you at any time work with any electrical machinery or appliances?

A. Yes, I did.

Q. Where was that?

A. At Lake Sabrina on Bishop Creek, in California.

Q. What were your duties there?

9 A. Well, all I did there with electrical equipment was to throw a switch a few times.

Q. And what were your duties there?

A. Principally running a stationary engine, a donkey-engine to the swinging-boom brake.

Q. What kind of an engine, steam or gasoline?

A. A steam engine.

Q. How long did you work there?



(Testimony of P. R. Sheaff.)

A. Why, the first time, about three months, I think.

Q. And how many times did you work there?

A. Twice.

Q. How long did you work there the second time?

A. About the same length of time."

WITNESS.—(Continuing.) After that, I later worked around electrical machinery at Fairview, Nevada, and Wonder, Nevada. At that time I was employed by the Pacific Power Company. [91] I was first employed by the Pacific Power Company along about the tenth of April, 1911, by Mr. George Johnson, in Hawthorne, Nevada. He hired me in Hawthorne to go with him to Fairview and dig holes and to help in general with this line they were going to build from the main line into Fairview, just a spur line. The main power line runs from Lundy, California, to Wonder, Nevada. The power plant of that line is on Mill Creek in California. The power is conveyed from there to Fairview over their wires. It is a line of wires. There are three wires. I helped with the construction of that line. I dug holes and help set poles, and worked around the reel wagon when they were constructing the line. My duties simply consisted of digging holes in the dirt and rock. The reel wagon carries five reels—three reels for the electric line and two for the telephone line, and those two lines are about thirty feet apart. This

(Testimony of P. R. Sheaff.)

wagon is drawn by horses, and they keep the  
12 wagon along as close to the electric line as they  
can; that is, to where the electric pole is set  
in the ground, so that the three heavy copper wires  
lay close to the power line and the two telephone  
wires coming off the wagon have to be carried over  
this thirty feet to parallel the telephone lines; and  
my duties consisted of taking a piece of wire—just  
take a piece of wire and bend it around and make a  
hand hole, do one for each hand and slip it  
13 through these two telephone wires, and I  
would be in parallel—I would be close over by  
the telephone line and I would stretch and pull these  
telephone wires over to the telephone poles as they  
played off the reel-wagon. Those power wires  
were approximately between three-sixteenths and a  
quarter of an inch in diameter; the telephone wires  
about one-eighth of an inch in size, or possibly a little  
less. The electric wires, I think, were made of cop-  
per, and the telephone wire was made of galvanized  
iron. That was the construction of the main  
14 line. I worked on the construction of the  
main line about [92] two weeks. All the  
time I was constructing this main line, I was work-  
ing for the contractor. I first entered the employ  
of the Pacific Power Company about the tenth of  
April, 1911. My duties were to do whatever George  
Johnson told me to do. We worked in Hawthorne  
a day or so gathering together some insulators and,



(Testimony of P. R. Sheaff.)

I think, possibly a few other things from a warehouse in Hawthorne, and labeling them, painting a sign on them so they could be shipped over the railroad, and we worked at that about a day.

15 Then we went from Fallon to Fairview the next day and started in to dig holes for these poles, and I think I dug holes somewhere around two or three weeks, and after that we set the poles in these holes, and after that, I helped string wires on these poles—those from the main line up to the substation in Fairview. Up to that time, I had never in my life strung any wires on any poles.

(By consent of counsel, an order was thereupon entered excluding all witnesses from the courtroom, except the plaintiff, an officer of the defendant, and the expert witnesses.)

When I went to work for Mr. Johnson I was employed to do labor work. These poles were dug between the main power line and the substation at Fairview. In stringing the wire I climbed the poles and pulled the wire up on top of the insulators and tied it on. Up to that time, I had never done that work for any person, or at any time before that time. When we started to string the wire was the first time I ever climbed an electrical pole. I climbed those poles with climbing irons—the irons that the lineman wears and straps around his leg. They have a spur on them. After I finished that work, I went to work up at the substation at Fair-

(Testimony of P. R. Sheaff.)

view. I was helping Mr. Halpenny, my boss. He was [93] installing the transformers and fixing up that substation. Most of the work was shifting these transformers and getting them into place. We had to put them on rollers and take bars, pinch bars, and shift them around to get them in the right place.

I worked about a month at that substation  
18 under Mr. Halpenny, from whom I received my orders. After I had finished this work at the substation I went to Wonder. At Wonder we did pretty near the same thing as we did at Fairview. I was still working for this company. I worked at Wonder altogether about six weeks. The first part of the time I helped Mr. Halpenny and then he told me to go ahead and build the line from the substation in Wonder to the main line, and I put up that line, and then I put a line in the mill. In the course of  
the construction of that line, I did not make  
19 any of the connections. After I finished that new line Mr. Halpenny and myself built a lightning-arrester. In connection with that lightning-arrester I dug the holes for the poles and assisted him in putting them up. That lightning-arrester was constructed as follows: there were four poles put in the ground at right angles to each other, that is, about like those four legs of that table, and those poles must have been about—oh, I suppose  
20 sixteen or twenty feet long; and then there was a framework built on those poles



(Testimony of P. R. Sheaff.)

seven or eight feet from the ground, and then the lightning-arrester was put on top of that framework. This lightning-arrester to a person who had never seen one before looked like a spider lying on its back with its legs in the air. It was made out of lumber and poles and insulators and pipe. I don't know whether that lightning-arrester was in any way connected with the main line or the feed wires. I didn't make any connections around that lightning-arrester.

After I had finished helping Mr. Halpenny on  
21 that lightning-arrester, [94] I went to Fairview to do a job on the lightning-arrester there. At that time, there was a lightning-arrester at Fairview which had been constructed about the middle of June. I was there at the time it was constructed. I did not work on the arrester itself. I worked in connection with the building of that lightning-arrester. I helped to dig holes, and I helped to bore some holes in some timbers that were used in its construction. The men who were there were Mr.

Halpenny, Mr. Greenleaf, Mr. Herring and  
22 Mr. Campbell and an old Swede carpenter. I am not sure who was in charge of that work; that is who was directing the building of that lightning-arrester. I was not right there at the time it was being built. I was cleaning up the substation and outside of the substation. This lightning-arrester was on the rear side, outside the building of the substation. It wasn't far from it. The substation was

(Testimony of P. R. Sheaff.)

constructed of lumber and covered with corrugated iron. When I was sent over there I was told to get some clamps made and to dig some holes and put some concrete blocks into them. These concrete blocks were made of sand and cement.

23 I made them in Wonder and they were about eight inches square and about two feet long. I was told where to dig the holes by Mr. Halpenny. He said, dig the holes under the lightning-arrester, right plumb under the arms nearest the switch. There were six arms of the lightning-arrester. I received that instruction in Wonder. On the morning of the 18th of July, 1911, I went from Wonder to Fairview.

24 I left Wonder about half-past four in the morning and arrived at Fairview about seven o'clock. After I got to Fairview I had breakfast, then I went up to the mill—the Nevada Hills mill—a stamp-mill. After I got to the mill I went and saw Mr. Fleming and went to the blacksmith-shop, [95] and he gave the blacksmith instructions to make these clamps that I had drawings for. Then I saw Mr. Perrin and I got the key to the substation and went down to the substation. These clamps were to be fitted around these cement blocks.

25 After I got to the substation, I got a pick and shovel and went out to the lightning-arrester and dug these holes.

(Mr. Curler thereupon drew a rough diagram on the blackboard for purposes of illustration.)



(Testimony of P. R. Sheaff.)

WITNESS.—(Continuing.) The substation was located on the crown of the hill about one hundred and fifty feet from the Nevada Hills Company. The ground where the substation was built had been levelled. They drilled some holes in the rock and blasted it and levelled it off. The refuse and earth that was taken from this spot that was leveled was thrown to one side. This ground was level for a  
26      few feet from the building, and then sloped off down the hill. Where it sloped off, of course it was rough, but the first three feet from the building it was comparatively smooth, although it was composed of rocks. Looking towards the building, with the lightning-arrester between the building and myself, I dug the first hole to the right-hand side, I dug the second hole in the middle and the third hole to the left. These holes were situated directly under the end of the arm of the lightning-arrester—ex-  
27      actly. To get the location of the spot to put those holes directly under the end of the arm, I had a plumb line—a piece of twine with a little rock fastened to the end of it. I wound one end of that around the rod, so that the rock hung down perpendicularly. I wound it around the end of the arm which was made of pipe. That was a part of the lightning-arrester. In digging those holes, I [96] used a pick and shovel. The formation was made ground. The rock and earth that I dug out of these holes I threw to one side—

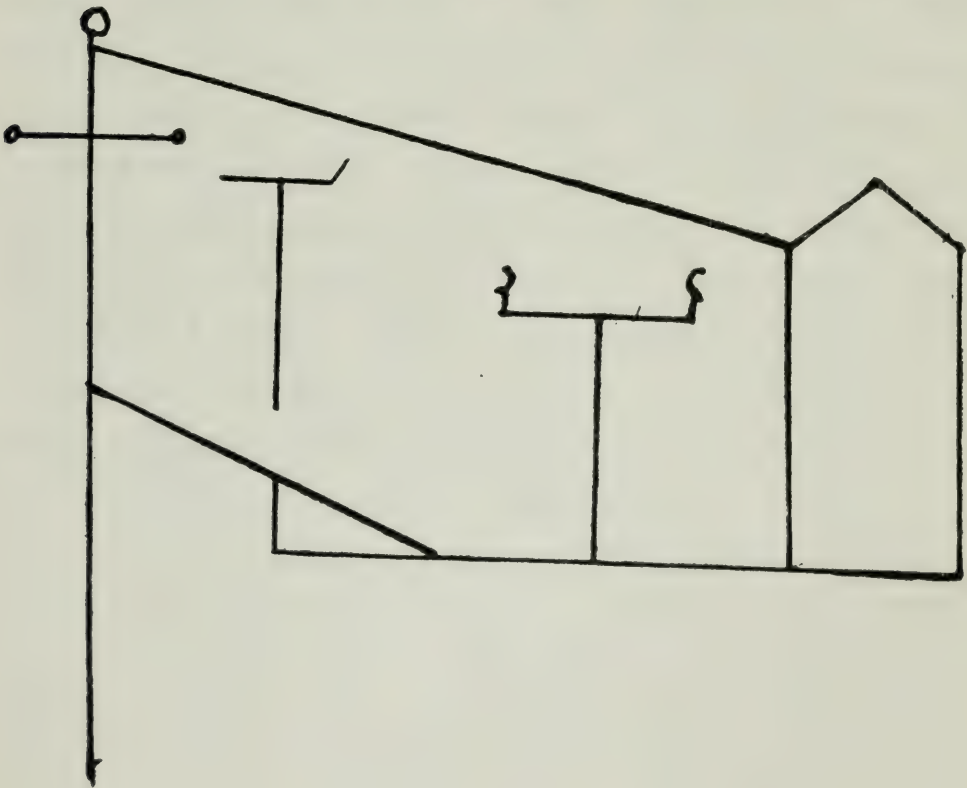
(Testimony of P. R. Sheaff.)

28      towards the down-hill side. Those holes were about a foot and a half deep and I should judge, about fifteen inches in diameter across the top. There was a guy wire in the immediate vicinity of those holes running from the last post into the ground. That guy wire came down across the middle hole, or close to the middle hole. It passed over the middle hole at a height of about two feet. I recognize this drawing upon the board.

Mr. GEDNEY.—(Q.) Mr. Sheaff, will you explain that drawing, if you understand it?

(The following is a facsimile of the drawing referred to:)

**[Facsimile of Drawing upon the Board (1).]**





(Testimony of P. R. Sheaff.)

29 A. Yes. This is the last pole, and this is one timber of the switch, and this is a lightning-arrester, and this is the substation. This is one of the wires running from the last [97] pole into the substation, with the gable; this gable of the substation was around this way, the gable end is looking that way; and this is the guy wire running from this pole down to the anchor here.

WITNESS.—(Continuing.) It was not attached to that post, the end of it was in the ground between these two posts; there were two posts here 30 you see; this pole was not so far away. This (indicating on diagram) was the lightning-arrester there. I dug those three holes right along under these arms here. There were three arms there and I dug the three holes under each arm, that is, underneath each one. There were three arms, the same as are shown here. This shows just as you would see the lightning-arrester looking at it from either end. There were three sets, the same as is shown here on the board. After I had dug these holes I started for the side of the build- 31 ing and that was all I remember for some time. I was going to the side of the building to get a cement block. They were around on one side of the building. I started around to the right from where I dug the holes. With regard to this lightning-arrester that brought me around towards the building—closer to the building. I don't exactly know what happened to me next. The next thing I remember, I was lying on my stomach alongside of

(Testimony of P. R. Sheaff.)

the substation. My head was further from the lightning-arrester than my feet. Before that

32 time I presume I had lost consciousness. The next thing I knew I was lying on the ground.

At the time I started, I had started to walk around toward the building. I did not feel any sensation or any stroke or anything of that nature. When I found myself lying on the ground with my head away from the lightning-arrester I was weak. I do not know if I can describe my condition. I crawled around the building past the [98] lightning-arrester and came back this way. In passing there,

I went between the lightning-arrester and the  
33 building. I crawled because I could not walk.

I crawled right around the substation to the inside, over in the corner where the telephone was hanging. I was partially conscious part of the time. My purpose was to get to the telephone. I did not get to the telephone. I could not stand up to it. It was hanging up about five feet from the ground. I pulled myself up to the window and I shouted. There was no one else there at that building or around that building at the time this happened. There was no one in the immediate vicinity of that house. It was about

34 two hundred feet to where any one was. I got to the window and shouted and Mr. Herring first came to my assistance and then several others. They fixed me up as best they could—bandaged me—and then they put me into an automobile and took me to Fallon. At that time, I don't think



(Testimony of P. R. Sheaff.)

I fully realized what my injuries were. I fully realized what my injuries were about three or four days after that. My back and shoulders and my feet and ankles were burned. The top part of my  
35 back and about half way down. The top of the left foot was burned and the whole of the right foot. During the trip from Fairview to Fallon, I was conscious at intervals. I was in pain. I can't describe that pain. It was all over me. During the time that I was conscious the pain was severe. After I got to Fallon they took me to Doctor Gardner. He attended to me. I am under his care yet. I was under his immediate care there about six months. I was in bed about three months.

I could not see my back; I don't know as that  
36 was swollen, but my right leg all the way from the foot up into the thigh was swollen part of that time. It [99] was swelled up larger than normal. It was very painful during the time it was swollen. The color of that limb during the time it was swollen was red. During that three months that I was in bed I suffered. There was intense pain in my limbs, and feet and back and shoulders and arms—I can't explain it in words. I don't think I did rest in bed during that time, no matter  
37 which position I laid down in, I was laying on some of my burns. I could get the most relief lying on my stomach. I would lie full length on my stomach with one or two pillows under my stomach on a flat bed and no pillows under my head. During these three months I did not sleep regularly, but I

(Testimony of P. R. Sheaff.)

did sleep some. The doctor administered some opiates to me during that time. That relieved me from pain somewhat; it did not relieve the pain, but induced me to sleep. I could not notice any let up in the pain. At the expiration of those three  
38 months I would get up for a little while every day and they would put me in a wheel-chair, and then they would prop up other chairs for my feet, and I would kind of lay down in this wheel-chair in the window. I continued to do that, I suppose, for about a month. Mr. Justice was taking care of me during those four months. Mr. Justice was a nurse. I used the wheel-chair for quite a while after the expiration of this month. I then still remained in Fallon. Since that time, I have  
39 been able to navigate around with my crutches and a wheel-chair. At this time I am using crutches. I have never been able to walk since that time without using crutches. I was injured on the 18th day of July, 1911. I cannot now get around without crutches on account of my feet being sore. Since that time I have done no labor. I have worked in no way that has brought me in money. Since that time my friends have supported me. This mechanical contrivance here to which you call my at-  
40 tention is a model of a [100] lightning-arrester at Fairview. This model, to the best of my knowledge, fairly represents in its construction that lightning-arrester. The building would be on the lower side of that—in here—(indicating on model). The main wires, or feed wires, would come



(Testimony of P. R. Sheaff.)

past that and then into the building. They would come from the high side. The post I spoke of which had a guy wire on it would be out in here—out away from the high side. This post was on the high  
41 side—about fifteen feet to the best of my recollection, from the first part of this lightning-arrester. The building with regard to the posts of this model on this low side would be just in here. There would be no posts similar to these two on that lightning-arrester on the low side. The main wires going across were connected to insulators on a bracket projecting from the side of the building. On the ground there were not these posts which are shown on the low side. These three in-  
42 sulators here were out on an arm built on a bracket projecting from the building, and the building would be on this side from the inside point of these three wires on the low side of this lightning-arrester to the building would be about three feet. That guy wire would come into this model from this pole down in underneath this structure here. Just about like your pencil at that point, possibly a little bit lower than you had it there. It is on a little sharper angle there, something like that. I dug the first hole underneath this wire here, right down in here. (Witness indicates with pointer.) That would be underneath the right hand looking toward the building,—the right-hand  
43 point or back point of the lightning-arrester looking toward the building. To go to that

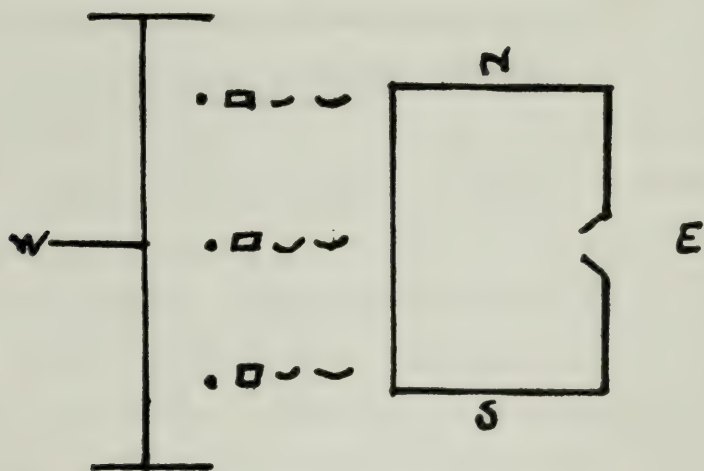
(Testimony of P. R. Sheaff.)

point I came around the building here; suppose this is the building, here is one wall and here is the other here; I came around the bulding right around this side, and around here over to this point over here. The door would be on the east sire [101] and the sides of the substation would be north and south.

44 According to my recollection this side of it would be the east side of the lightning-arrester and the west side of the building. In this drawing that you (Mr. Gedney) have made on the board, these circular marks represent the lightning-arrester, the door of that building would be around on this side.

(The following is a facsimile of the drawing made on the board by Mr. Gedney and referred to by the witness.)

**[Facsimile of Drawing Made on the Board (2).]**



It would take up more space than that, it was a big wide door—two swinging doors. They open inward. Looking out of those doors the direction would be about east. The upper part would be north



(Testimony of P. R. Sheaff.)

and the lower part south, and the back part  
45 west. When I went from the building around  
to the lightning-arrester, I went right around  
this southeast corner, and then around to the south-  
west corner over to that point, that lower left-hand  
point there, about in that position (indicating).  
After I dug that hole I dug the next one. With  
regard to that guy wire the next hole was about  
underneath the guy wire or close to it, if it was not  
directly underneath. I dug the next hole on the last  
one. In digging these holes I threw the dirt  
46 down to one side—toward the west out here.

To the best of my recollection, those chalk  
marks represent the pile of dirt as I threw it out.  
This would represent one hole. [102] (Witness  
refers to model.) It would be the last hole. This  
direction (indicating) for the purpose of illustrating  
would be north, east would be over to this side, the  
right side, and the south on this side (indicating.)  
The west would be to the left. I dug the first hole  
right under this here (witness indicates with pointer  
and Mr. Cannon marks point with the letter  
47 “A” on model with chalk). This letter “A”  
would represent the first hole. The second  
hole was dug under this middle arm. (Mr. Cannon  
marks point on model with letter “B.”) This point  
marked “B” would fairly represent it. The third  
hole would be here (witness indicates position on the  
model and Mr. Cannon makes chalk mark on model  
and designates the point “C”). This chalk mark

(Testimony of P. R. Sheaff.)

designated "C" would represent that. The pile of dirt that I took out of hole "A" was down along here some place (indicating), it was an irregular pile. That chalk mark would fairly represent  
48 it. It was in the same position for the dirt as hole "B" with regard to hole "B." That would represent the dirt and at "C" in the same position with regard to the hole. The chalk marks upon this model fairly represent the holes and piles of dirt. The solid marks made on this model represent the piles of dirt and the square marks represent the holes. After I dug the last hole, I started from here (indicating)—from hole "C" toward the building. I was then going east. In digging that  
hole I was using a shovel. I threw the shovel  
49 to one side—down in here some place, or right along side of the hole. I got through, and just tossed it to one side, alongside of hole "C." The last I remember I was going toward the building. The last point at which I remember I was about in here (indicating on model about the point marked "D"). The next thing I knew I was lying on my stomach alongside the building—this wall would be along here (indicating on model) near the  
low side of the building about where you  
50 have drawn [103] that line near the low side of this model. My head was towards the north. If that is drawn to scale, my head would be about here (indicates on model at the point marked "E"). My feet were toward the south. They were



(Testimony of P. R. Sheaff.)

about here (indicating the point marked "F"). As I recollect, I was lying at full length. When I came to, I crawled around here to this corner of the building, and then around this side—that is, I crawled to the south along the general direction marked to this

dotted line. I went around to the side and  
51 into the building. In going from hole "C" to

the point "E," the ground was a little rocky, the first few feet, and then this in here, along here over to point "E" was comparatively smooth and level. About a third, or a half of that distance was rocky. The ground alongside of the west side of the building was levelled off and smoothed up as best it could be. From hole "C" going around the lightning-arrester, the other way, it was rocky and the ground slopes down this way, about like rock will

lay after it has been thrown out, I suppose,  
52 with a shovel. From point "C" there was a

fence which would obstruct your going west around on the outside of the lightning-arrester.

There was a fence down in here (pointing). It was a wire fence and it went from some point over here on the northwest corner of the building to a point down in here somewhere. It went to a switchboard standing out here. The switch appears upon the model, here (indicating). The switch would be located at the highest point on the west side of this

model, as we have it marked. This wire went  
53 from the northwest corner of the building over to a post that supported the switch. It

(Testimony of P. R. Sheaff.)

then went, to the best of my recollection, to the other post of the switch, along this side. The posts of the switch acted as posts for this fence. From the southwest [104] corner of this model, that wire went over to the southwest corner of the building. To the best of my recollection, that fence was constructed of telephone wire, either two or three wires. When I first went there, before I dug that hole "A,"

to get in through that fence, I took the staples  
54 out of this southeast corner of the fence.

When I went from point "C," as shown on this model, I was going around here, and I got this far. I went from point "C" to point "D." I intended going through the fence to get to this south side of the building. I could go along the east side of the lightning-arrester, or the west side of the lightning-arrester. If I went along the east side of the lightning-arrester, I would go between the lightning-arrester and the wall of the building,

55 and if I went along the west side of the lightning-arrester, I would go between the lightning-arrester and the switch. In going along that way, west of the lightning-arrester and between the lightning-arrester and the switch, the ground was rough and rocky, and uneven, and sloping at an angle. The guy wire would impede a person from going that way. It was coming down over the hole marked "E," like that (illustrating). If a person had gone that way, the wire at the point where you would



(Testimony of P. R. Sheaff.)

cross would vary as to height. If you passed  
56 under here, why it might be four or five feet,  
and if you stepped over it, it might only be two  
feet. If you went under the wire at the closest  
point you could go to the switch; the height of the  
wire would have been about five feet. If you went  
past the wire at the closest point to the lightning-  
arrester, the height of the wire would be about a foot  
and a half or two feet. There was nothing else be-  
side the lightning-arrester there to impede in any  
way from going around that wire away from  
57 hole "C" to the corner of the building on the  
[105] south side. On the south side there  
would be nothing to obstruct a person going over  
that. Those piles of dirt, with reference to where  
a person would go in going along between the light-  
ning-arrester and the switch were about where they  
are marked here. Those piles of dirt were about  
eight or ten inches or a foot high. They consisted of  
rock and a little dirt. I wound the twine around the  
ends of these three arms of the lightning-arrester—  
this one, and this one, and this one, in order  
58 to get the location of those holes. That would  
be on the west side and next to the switch and  
directly above the points marked "A," "B" and  
"C." I was at Fairview when this lightning-  
arrester was constructed by Mr. Halpenny and some  
others. I don't know whether that lightning-  
arrester was finished at that time. There were no

(Testimony of P. R. Sheaff.)

blocks there at that time. At the time Mr. Halpenny and others constructed this lightning-arrester, I don't know whether they connected the wires to the lightning-arrester. When I went over on the  
59 day that I did go to Wonder and Fairview, I did not know whether or not the feed wires had been connected with this lightning-arrester. On the model these represent the main wires on the electric line running into the substation. The three top wires on this model are connected to the lightning-arrester here on these three points where it went into the building. At the time I went out to Fairview to dig those holes, I don't know whether those wires were connected. Mr. Halpenny did not say anything to me as to whether or not they were  
60 connected. I didn't know that they were not connected. At that time I didn't know whether or not there was any danger connected with this lightning-arrester, if those wires were connected. I had not been informed by any one that there was any danger in working around this lightning-arrester. I had never worked on any live wires up to that time. I never [106] worked in my life on any live wires. At that time I did not know enough about electricity to know whether or not there was any danger in working around this lightning-arrester if those three wires were  
61 connected with the arms as shown upon this model. I think I do know now. Mr. Halpenny did not tell me to wrap that twine around the



(Testimony of P. R. Sheaff.)

end of that lightning-arrester in order to get the location of the hole.

Mr. GEDNEY.—Q. At this time, if the Court please, we ask permission to exhibit the back and feet of the plaintiff to the jury. Will you please remove your coat and shirt, Mr. Sheaff? (The witness removes his clothing as requested.)

WITNESS.—Before I received this injury I did not have any scars on my back. There were  
62 no scars on my left arm and shoulder which now appear there. There were no scars on the right shoulder before this accident. The extent of the burn on the left shoulder, as far as I know, came down here as far over as I could see. I could not see over there very far. It was about like the left shoulder, as far as I could see. The highest burns on me were on the top of my right shoulder. There were burns right here on top of the left shoulder  
(indicating). I was burned on the body be-  
63 tween the back, which I have exhibited to the jury and my feet right here. I was burned on this left foot. This top of the left foot was burned and the toes and the right foot was burned on this side, on the outside and on the inside and on the bottom. The two toes which are missing on the left foot were taken off after this injury. At this time, my left foot pains a little. I use it to walk upon. If I walk to any extent it gets very painful and tired.

(Testimony of P. R. Sheaff.)

It pains me in the left hip, right in here (indicating) about the top of the left hip, here is the top of the bone, here, and it is right in here that it is painful. There is a slight pain there all the time [107] and walking increases it. I have not used my right foot since this injury. (Witness stands up and places foot upon the ground.) I can't put my heel to the floor standing up. I can put it down to there, and that is as far as I can get it by putting my weight on it. The heel is about three inches from the floor. When I bear my weight upon it it is painful. Since I left Fallon, I have massaged and exercised that foot. I massaged it by simply rubbing it, rubbing oil and vaseline on it. I exercised it by practicing putting it on the floor, and then I take it in my hands and work it the best I can. (Witness sits upon the table and shows the jury how he works it.) I cannot take my hands and by pressure bring that heel down to the level of the foot to get the foot straight. In that process there is pain all over the foot and ankle. In exercising it and attempting to walk on it there is pain. It is very acute on the bottom here. It is painful in these bones, in the instep and underneath the top of the foot, that is, in the bones inside, and then it is painful in the region of the ankle, inside of the ankle. As I hold my foot here, without putting any pressure upon it, it is painful. It pains me at this time. It has been more or



(Testimony of P. R. Sheaff.)

less painful since this injury. There is much  
67 less pain now than at the time I was in bed.

There is a big difference. The whole foot  
pained me then, only the pain was much worse then.  
At this time, I have the natural feeling nearly all  
over my left foot. There is soreness in my left foot  
back of where those two toes were amputated, and  
right where they were amputated, along that region,  
or right in here, and around here (showing on foot).  
The two small toes were amputated and the soreness  
is right where they were trimmed off. The next two

toes at this time are a little sore. If I don't  
68 walk flat-footed, I am unable when I walk to  
put the foot down, and to raise up on it natur-  
ally, like a man would walk, put his heel down first  
and then raise on the [108] ball of his foot to get  
the spring; I can't do that with the left foot. I have  
to walk flat-footed and on the heel; bear the weight  
on the heel. These two toes are drawn up now.  
They were not that way at the time of the accident.

In the right foot, the feeling is not entirely  
69 natural. On the bottom it is very tender and  
sore and on the top there is an area in the  
skin that there is no feeling in, and underneath, in  
the bones, there is a pain in there. The heel is kind  
of sore up a little ways. I know what is meant by  
the "Tendon of Achilles." This is it, this big ten-  
don running up here on the right foot (showing).  
That is sore at this time.

(Testimony of P. R. Sheaff.)

Mr. GEDNEY.—Q. Mr. Sheaff, will you just put your foot up in this chair, your right foot? (Witness places his right foot on a chair.)

70 Q. Now, I will ask you to turn your head.

Now, state where I have my pencil. (Touching foot of the witness with pencil.)

A. I can't feel it.

Q. Where is the pencil now?

A. I can't feel it.

Q. Where is it now?

A. Now, you are touching the heel.

Q. Where is it now? A. Can't feel it.

Q. Where is my pencil now? A. I can't feel it.

Q. Where is it now? A. Can't feel it.

Q. Where is it now? A. Touch that again.

Q. Where is it now? A. I can't feel it.

71 Q. Where is it now? A. I can't feel it.

Q. Where is it now? A. I can't feel it.

Q. Turn your leg over a little bit, and turn your head again. (Witness does as requested.)

Q. Where is my pencil now? A. I can't feel it.

[109]

Q. Where is the pencil now? A. I can't feel it.

Q. Where is the pencil now? A. I can't feel it.

Q. Where is it now?

A. Now, it is coming up the leg, up about here somewhere (showing on leg).

Q. Where is it now?

72 A. Now, it is on the outside of the heel.

Q. Where is it now?



(Testimony of P. R. Sheaff.)

A. Now, it is on that bone sticking out on the middle of the foot.

Q. State whether or not that bone sticking out on the outside of the foot is tender now?

A. A little bit.

WITNESS.—(Continuing.) The right foot does not get warm unless I toast it at the fire. It keeps cold. Since this accident, that right foot is colder than the other. I think the right foot is colder now than the left foot.

73      Mr. GEDNEY.—We ask to have the jurors feel of the feet at this time.

The COURT.—The jurors may do as they wish.

(Some of the jurors feel of the witness' feet.)

WITNESS.—(Continuing.) I will be twenty-nine the first of next month. Before this accident happened I was about six feet six inches. My height now is about the same. Before this accident when I was working I weighed about two hundred and five pounds. I may weigh about approximately one hundred and eighty-five pounds now. When I was not  
74      working, I would weigh about two hundred and ten or two hundred and twelve pounds.

I have suffered mentally since this accident. My suffering was caused by worrying about my condition. I suffer now physically at all times. Before this accident I slept well. Now, my rest is broken, I

(Testimony of P. R. Sheaff.)

do not sleep well. Since the accident, I wake up any time now, I can't sleep [110] for any length of time. I get nervous, and my feet get to bothering me, and my back, and I can't sleep good. This has affected my nervous system. I was not ner-

75 vious before the accident, and I am now. My experience in running a stationary engine before I was hurt was altogether about five or six months. In my present condition I would not be able to run a stationary engine. Besides going in a wheel-chair and on crutches, I have gotten about a little bit on my knees. I have never tried to walk with one cane. I have tried to walk with a cane and a crutch. I could not do that very well because I can't balance myself. This accident occurred about 10:20 or 10:30 in the morning. It was a fine

76 day. It was warm. I had on a suit of underwear and an overshirt and a pair of overalls, a pair of socks, and a pair of high top boots. I was perspiring freely at the time. I did not at that time know that electricity would jump. Up to that time I had never heard that electricity would jump. Under my agreement with the company, I was to receive four dollars a day. While working for this Power Company I got four dollars a day, except a few

77 days, and then I got four and a half a day.

When I got the check after I was in Fallon, after the injury, I was paid four and a half a day. The check, part of it was for four dollars a day, and



(Testimony of P. R. Sheaff.)

part was for four and a half. I sent that check to Judge Curler. I afterward received it again. He told me to go ahead and cash it. The wages of a laborer at that time and working for that company was four dollars a day.

Cross-examination by Mr. CANNON.

On the day of the accident, my eyesight and  
78 my hearing were good. As far as I am able  
to say now, I was in practically perfect physical condition. I was born in Kent County, England, in a town of about fifteen hundred or two thousand  
[111] people. When I was seven years of age my parents moved to the city of Canterbury. Canterbury has a population of about thirty thousand. I lived there about ten years, and left there at the age of seventeen. There were no street-cars in Canterbury at that time. I don't remember whether or not I knew of electricity being used in those cities  
in one way or another, industrially. I graduated  
79 ated from the grammar school at twelve years of age and afterwards went to the high-school—about three or four months. We did not take up physics in the grade I was in. I left high school at the age of about twelve years and four months and went to work in a drug-store. I worked in the drug-store, roughly, somewhere around about six months. I was washing bottles. The first time I ever had anything to do with steam was in British Columbia

(Testimony of P. R. Sheaff.)

in 1902. I was seventeen at that time. After  
80 leaving Canterbury I went to British Columbia. I came over to the United States from British Columbia a day or so. The first I ever had anything to do with steam was about one hundred and fifty or two hundred miles up the coast from Vancouver. It was in a lumber camp. I went to work first with the steam firing a boiler. Steam was used to haul logs in from the woods. It was used in a donkey-engine. One end of the cable was fastened to a log and then the cable wound around a drum.

There was no electricity used there. In coming  
81 from England to British Columbia, I passed through Montreal and Winnipeg, and I think that is all the large cities there are, that is all I remember. I went through Vancouver in British Columbia. I had probably heard something of the use of electricity before that time, before I was seventeen years of age. I don't know now whether I did know at that time or not. I presume I possibly did. About twelve years of age was the usual age for the boys, I think, to graduate [112] from grammar school. I don't remember when it was first  
82 called to my attention that electricity was used in the arts in any way to run street-cars, or to do anything in a business way. I don't think I had seen street-cars operated by the trolley by the time I was seventeen years of age. I don't know where I would see them. I don't remember whether



(Testimony of P. R. Sheaff.)

or not I saw them in Montreal. I am pretty sure they were operated in Vancouver when I first went there, although I can't recollect, but I am positive they were operating them there. I remained  
83 at this lumber camp the first time about three months. I worked there again afterward about five months. Part of the time I was acting as a waiter, and part of the time as swamper, and part of the time as fireman and part of the time I was running the engine. I was eighteen before I got to running an engine. I had been two or three months about a steam-engine before I was permitted to run it. In running this steam-engine, I did not understand its parts quite perfectly, not then. I understood just to open the throttle and she would  
84 run herself. After I was running it for some little time I was left in charge of the engine by those over me, and so I had, for some period of that time, actual charge of that steam engine. I was doing my own firing. I did not do any repairs on it or anything. I was put in charge of it some time along the following spring, about five months from the time I went there. All my experience about a steam engine only occupied something like  
85 about two months before I was put in charge of it. I remained in charge of it about a month. The next experience I had in the operation of steam engines was in 1906, at Millers, Nevada. I did not go from British Columbia straight to Nevada.

(Testimony of P. R. Sheaff.)

In the meantime I went to Australia and New Zealand on a steamship. I was working as [113] coal passer. During that time I was passing coal and dumping ashes on the steamer "Moana." That steamer was electrically lighted. I presume it had electric motors and generators in it, although I  
86 never saw them. I was in the engine-room, but not a great deal. I was in there once or twice. I worked in Sidney, Australia, a little while cleaning the bilges on this steamship. I worked in New Zealand. I dug gum for a while. I didn't come back in the same ship. I came back on the steamer "Sonoma." That was a ship landing at San Francisco. I came from New Zealand to San Francisco. I paid my passage. I was a passenger coming back. I landed in San Francisco in 1904. I re-  
87 mained in San Francisco about a couple of hours. I went to Oakland. I lived in Oakland somewhere about a month. Oakland is just across the bay from San Francisco. I make my home in Oakland. I have lived altogether in Oakland six or eight months. During the time that I lived in Oakland, I was accustomed to be in San Francisco, more or less. I worked in San Francisco. I took tickets at a theater door about two weeks. I rode on the street-cars in San Francisco—trolley-cars run by electricity. I have ridden on the street-cars in Oakland run by electricity. I suppose my atten-



(Testimony of P. R. Sheaff.)

tion had been directed to the fact that electricity was in common use in the arts prior to 1904. I don't think my curiosity had been aroused concerning electricity. I can't say that I was quite a reader of the magazines and the current topics of the day at that time. Since that time, in recent years, I have been quite an industrious reader of certain kinds of reading. I don't know which way my taste does run. At any rate, even in 1904, I knew they had electric lights, and that they ran street-cars and other things by electricity. I did not know that electricity was a dangerous thing. In [114] 1904, I did not know that people could be killed by electricity. I did not know then that in some states people are executed with electricity. I have learned that fact since. I don't remember when I first saw an electric battery. I think I have received light electric shocks experimenting, and so forth. I think it was when I was a boy, about sixteen or seventeen years of age that I first had my attention attracted to the fact that electricity would give you a shock if you happened to get close to it, or in contact with it. That was before I left Canterbury. That was at a County Fair and you paid the fellow a small fee and you got a shock. I presume he had an electric battery, or electric apparatus there at that time. I was told it was electricity he was using. I took hold of some handles, or something that he had there, and

(Testimony of P. R. Sheaff.)

made a connection and received a shock through my system, and from that time on, at any rate, I guess I knew that electricity would do that  
91 sort of thing. I learned my trade as an engineer of steam engines, or stationary engineer in British Columbia. Since then, I have had more experience to fit me as an engineer. I have had experience at Millers, Nevada, and in Sabrina Lake, California. At Millers, the plant was called the Tonopah Mining Company's plant. I was employed at the Esmeralda Power Company's plant at Millers. The first time was about April, 1906. That was when I came back from New Zealand. In 1906, I was working on boilers on a steamship running between Victoria, British Columbia, and Skag-  
92 way, Alaska. After coming back to San Francisco, I went North again and ran on a ship, the "Princess May," from Victoria to Skagway. I think she is an English ship. That was electrically lighted. First I went to work passing coal and afterwards I went to work as a fireman. I was working as a fireman on the steamship "Princess May" plying between [115] Victoria and Skagway. I worked at that time as fireman about seven months. During all that seven months we used to have to shine the tops of the cylinders in port. I did not have anything to do with the electric generators or motors on that ship. I think I  
93 have seen them. There was only one of them,



(Testimony of P. R. Sheaff.)

I think. I knew the office of it. I knew that a generator was a mechanical appliance by which the electricity which was used on the ship was generated. I learned the name of it and knew that it was a generator at that time. We had a dynamo. I have since learned that a dynamo and a generator are practically the same thing. They did not have  
94 any motors or use electricity for power at all on that ship to my knowledge. That was all the experience I had with a steam engine before going to Millers, Nevada. When I stated to the jury that my trade was that of a stationary engineer, I based that on the experience I have detailed to you here now, and such additional experience as I received at the Esmeralda Power Company. At the Esmeralda Power Company I was first employed as an oiler. I remained an oiler about six weeks or two months. I was also employed as a fire-  
95 man there; that employment was in 1906, and in 1907 also. I was an oiler in 1906, and I was an oiler also in the month of May, 1907, from the 11th of May, 1907, to the 28th day of May, 1907. I was an oiler in each of those years 1906-1907. As fireman, I was in the room or in the building where the stationary engines were, or the steam engines. Not in the same room, but in the same building. The place where I was acting as fireman, I had to  
96 go up a few steps to get on the level of the floor where the engines were. Those engines were compound engines. By compound engines I mean that the steam is used twice, once in the

(Testimony of P. R. Sheaff.)

high pressure cylinder and again [116] in the low pressure cylinder. These engines had high pressure cylinders and low pressure cylinders. I knew at that time which was a high and a low pressure cylinder. I didn't know the details of the valve gear. Those engines were connected up with something. That was a company for the generation of electricity,

and I was working in that power plant. Al-  
97 together I worked in that Esmeralda power plant about eight months in the years 1906-7.

Those stationary engines were connected up with a fly-wheel and generator. A part of the engine itself was the generator. At first there were three engines in that power plant and then they put in the fourth, and each one of those engines was connected with the generator, and the office of that generator was to generate electric current to be used for power and light, I suppose. That Esmeralda power plant distributed electricity in Tonopah and Millers. I

98 knew the juice went over the wires. As an oiler, my duties were to oil the bearings and wipe the engines and keep the place clean. My duties in or about the generators, as an oiler, was only to wipe them. I worked in my capacity as an oiler in and about the generators or instruments that were generating electricity. There was a switch-board in that power-house. That switch-board was made up of several different sections—well, there were two switch-boards in there, a large one and a smaller one. They stood along on the north side of the build-



(Testimony of P. R. Sheaff.)

ing, and they were made up of sections, and  
99 there were instruments and switches scattered  
among them, I could not tell you how many.  
There were a good many switches on. The office of  
the switch was to cut off the electricity, I presume.  
To cut off or turn on the electricity. During the  
time that I was working in this plant as fireman, or  
oiler, or both, I think I have observed that switch  
being operate. [117] I did not operate it myself.  
Some of them were projecting out from the switch-  
board, and some there was just the handle sticking  
out, just a lever. There was a kind of a slot  
100 where this switch went in. I suppose that  
where that switch went in to the slot, the con-  
tact was made which allowed the current to flow  
through. That was what I understood at that time.  
I did not know just what particular place those  
switches were for, but I knew the purpose of them  
was to turn the current off and to turn the current on  
to make the connection or destroy the connection. I  
could not say when I finally ceased working at the Es-  
meralda company's plant, because I think af-  
101 ter they shut the plant down they changed the  
name of the company. After shutting down  
that time, they did not again open up the engine-room;  
they ran the boilers to run the pumps and to heat the  
mill, the slime tank in the mill. I finally quit that  
employment,—why, I don't remember. I did not  
apply for the position of engineer of that plant at  
that time. That plant was running with three shifts  
part of the time I was there. I don't remember if

(Testimony of P. R. Sheaff.)

there was an engineer in charge of two of the shifts.

I don't remember whether the man in charge  
102 of the plant took a shift in place of the engineer on the third. At that time, before

leaving that position, I don't think I was capable of taking charge of that plant as one of the engineers.

It is not a fact that I applied for the position of engineer there. Part of the time I got \$4.00 a day, and part of the time \$4.50 a day. I got \$4.50 at that

plant. At \$4.50 I was firing the boilers. It  
103 is not a fact that I demanded either the position of engineer or \$4.50 a day, or my time. I

got my time. I guess I quit there. I don't remember the circumstances of my happening to quit. I

know a man named John Eiseman. I don't remember whether I knew him at that time. I don't re-

member when I first got acquainted [118] with him. I quit there about the 28th day of May, 1907,

I think. I don't remember a conversation had with

Mr. Eiseman shortly after the 28th day of May,  
104 1907, himself and myself being present, where

I said to him I had demanded of Mr. McConnell who was in charge of the power-house either \$4.50 per day as an oiler, or a job as engineer, or my time, and that they gave me my time. I didn't say that. It was a part of the duties of the chief engineer, the engineer in charge of the shift at that power-house to look out for those generators and switch-boards. Sometimes they had another man there that they called the electrician. At times he



(Testimony of P. R. Sheaff.)

was on a regular shift. I would say I worked  
105 about two months and a half in the engine-  
room, and seven or eight months around that  
plant altogether in the power-house—longer than  
that altogether because afterwards when they didn't  
generate any more, I worked in their running the  
plant as a heating plant. While I was working there  
in that power plant and around those generators and  
oiling them, I didn't know anything of the destruc-  
tive power of electricity. Possibly I knew then that  
electricity could kill. I didn't remember whether

I had or had not heard of people being killed  
106 by strokes of electricity. I don't remember  
whether I had or had not heard of people being  
killed by being struck by lightning. I suppose I  
had though. I did not know that lightning and elec-  
tricity was supposedly the same thing. I knew that  
in the State of New York criminals were executed  
by means of electricity. I don't know whether I  
knew that then or not. I won't say that I did not.

In 1907 I was twenty-two years old. During my  
lifetime I suppose I have kept my eyes pretty  
107 well open about things that were going on  
about me. Electricity was not one of the  
things that was about me a great deal in my ex-  
perience up to that time. On board ship, I suppose  
it was about me [119] all the time, I never had  
anything to do with it. I don't feel certain that I  
did know at that time that electricity could kill if  
administered in large quantities, large voltage.  
After working eight months in that power plant I

(Testimony of P. R. Sheaff.)

could not tell the difference between a hot wire and  
a cold wire. I don't think that I knew that a  
108 hot wire was one charged with electricity and  
a cold wire was one that wasn't. How could  
I tell the difference between a wire that was carrying  
electricity and a wire that was not? I knew that  
there was such a thing as a cold wire, a dead wire.  
And I knew that there was such a thing as a live  
wire. I knew a live wire was one carrying a cur-  
rent of electricity, and I knew that a dead wire was  
one not carrying a current of electricity. I didn't  
know that electricity at a high voltage was carried  
through that power plant, how high it was  
109 carried. I didn't know that it was carried at a  
high voltage. I didn't know anything about  
what voltage it was carrying. I knew there was  
electricity going through the line, going into Tono-  
pah, and I knew it was being generated in large  
quantities for the use of power and light. I worked  
also with the *the* Desert Power and Mill Company.  
I worked with the Desert Power and Mill Company  
in the years 1908 and 1909, and a part of 1910. The  
Desert Power and Mill Company was in  
110 Millers, Nevada. It was part of the old Es-  
meralda power plant, and the remaining part,  
I suppose, was the Tonopah Mining Company's mill.  
I worked part of that time as foreman in a power-  
house. They were not making any electricity there  
in those years. The engines were all shut down and  
the place was in disuse. While working for the  
Desert Power and Mill Company, I was brought into



(Testimony of P. R. Sheaff.)

connection with electric generators or motors. We had two or three motors that ran pumps there. The motor is an electric business that runs by electricity and has a pulley on it and turns machinery.

111 They had three of those motors at [120] that plant that were operating while I was there. They got their power from Bishop Creek I think, from the Nevada and California Power Company. I operated those three motors during that time I was there. I don't remember how long I operated those motors, but I suppose about a year altogether. In the operation of those motors I was pumping water. I only operated two of them, the third one I didn't operate. I operated those two by throwing the lever. The lever was to stop and  
112 start the motors. The office of starting the lever was for the purpose of throwing on or cutting off the electricity. When you used it one way, it would start it, and when you threw it back it would stop. I suppose that when you would throw the lever one way you would start the juice, and when you would throw it the other way you would cut it off. I knew that electricity was being used as the power to operate those motors, and I knew that a current of electricity was turning those motors  
113 or making those motors work. I suppose the wires came into those motors from poles outside and then they came into the room or building where the motors were and were attached to the motors themselves. I think I knew where those wires were, I think they came in the top, they came

(Testimony of P. R. Sheaff.)

in through the top of the motor and the motor was on the ground. I cannot remember where they came in, whether in the ceiling, the gable of the building, or what part.

Mr. CANNON.—Q. Where did they come in, in the ceiling, the gable of the building, or what  
114 part?

A. I cannot remember that.

WITNESS.—(Continuing.) In operating those motors I was within a few feet of the motors themselves and was accustomed to go about those motors. I didn't do the oiling for those motors. There was someone else doing the oiling. I was operating [121] the motors, and some one else was the oiler. I was not fully in charge of the motors. The man that oiled them was in charge of them, he was the electrician. My position was called fireman, I guess.

That electrical work, that motor work was  
115 only just a small part of my duties. I could work the motor and at the same time do my work at a fireman, too. I don't know whether I touched those wires that were carrying electricity into those motors or not during that year I was operating those motors. I suppose I knew enough not to touch them at that time. I suppose I did know enough to keep away from the live electric wire that was carrying power enough to run a motor. Well, there was no necessity for taking hold of them or anything.

Q. Of course, and you did keep away from  
116 those wires, didn't you?



(Testimony of P. R. Sheaff.)

A. Well, there is no necessity for taking hold of them or anything.

WITNESS.—(Continuing.) Altogether I should think it must have been nearly a year I was about those two motors and those wires connecting with them, and I knew that the power that was operating those motors was received from the wires that came in on the power line to that plant, and that it came from some power-house at some distance from where it was being generated. Up to that time I  
117 had worked both in a power-house where electricity was being generated and had worked at the other end of the line where it was used in the motor. I had worked at both ends of the line. About the 30th of April, 1910, I quit there and during the time I was running these electric motors I was receiving \$135.00 a month. I received the \$135.00 a month for operating an electric motor and as fireman, I should judge at a rough estimate, [122] for about a year. I don't know what other people referred to me as. I don't think I was  
118 called an electrician. I don't think that I received more than the ordinary electrician's pay. I received \$135.00 a month. That was just the same as fireman's pay, because the fireman worked eight hours, and I worked nine on the job. In my position with the Desert Power and Mill Company I was paid a monthly salary. I suppose if anyone had been referring to me they would have said the fellow that runs the boilers up there in the

(Testimony of P. R. Sheaff.)

power-house. I had some steam pumps there  
119 too. I ran the steam pumps during the same  
time, off and on, for the period of about a year.  
All I ran was just the pumps. I ran everything that  
was run in the building. I did not run the engines  
for generating the steam for the steam pumps. I  
fired the boilers, that was principally to heat the mill  
and the slimes in the mill, in the slime tank. I gen-  
erated the steam principally for use in the mill. I  
didn't run the generators. I just wiped the  
120 generators; that was all I had to do with them.

In the Desert Power and Mill Company I was  
running the boilers, firing the boilers, running the  
motors, and running the steam pumps all at the same  
time. I was in charge of everything in that building.  
I remained in charge of everything in that building  
for the course of about a year at \$135.00 a month. I  
didn't have full charge of it for a part of that time.  
I took up that work along about February, 1909, and  
continued it practically without interruption until  
April 20th, 1910, except for going away in the  
121 summer of 1909, it would be about fourteen  
months. Mr. McConnell had charge of it for  
part of that time. I was performing practically the  
same duties as Mr. McConnell was [123] perform-  
ing when he had charge of it. Mr. McConnell had  
charge of the Esmeralda Power Company when I  
was working over there. When Mr. McConnell had  
charge of the Esmeralda Power Company he used to  
see to overseeing the whole thing, the power-house  
and everything. He had charge of the entire plant.



(Testimony of P. R. Sheaff.)

I did not have the same kind of a position  
122 there as Mr. McConnell had. When he was  
working for the Esmeralda Power Company  
we called him the chief. When he was working for  
the Desert Power and Mill Company we called him  
Mac. After I ceased working for the Desert Power  
and Mill Company, somewhere in April, 1910, I be-  
lieve I went to Oakland. I remained in Oakland  
about a month or six weeks. I didn't take up any  
occupation in Oakland. From Oakland I went to  
different places in California. I just loafed around  
on a vacation. When I got ready to go to  
123. work again I went to work in San Francisco,  
that work had no relation to machinery at all  
or to electricity. I took up that occupation about  
two weeks and then went over to Oakland again. In  
Oakland I helped my uncle once in a while. He is a  
gardener. I next did work in connection with  
mechanical appliances after leaving Millers in the  
spring of 1910 at the Fairview Substation. I took  
up this occupation at Lake Sabrina in 1907-  
124 1908. That was between my employment with  
the Esmeralda Power Company and my em-  
ployment with the Desert Power and Mill Company.  
Lake Sabrina is on the middle fork of Bishop Creek  
in Inyo County, California. They did not have elec-  
tric generators or motors there then. I don't think  
they had electric motors when I first went there.  
They had electric motors while I was there. They  
installed an electric motor there while I was there.  
I tried to run [124] it for about five minutes, I

(Testimony of P. R. Sheaff.)

judge. I said in my direct testimony yesterday that part of my occupation there was throwing the switch at that electric motor. We only tried to make  
125 one trip with it out on the wire and it would not work; I guess the electrician didn't wire it up right, and it couldn't pull itself in. It was a movable motor. It was a crane running on a cable across the canyon. It was operated by a motor within itself, the whole thing was built altogether. I tried to operate across that canyon on a wire. I was in a cab. I could not make it work, it would not pull.

They did not have an electric hoist at this  
126 place while I was there. I think they took this motor down that fall while I was working there. It was in operation the following summer. I think it was only operated for a few trips to the best of my recollection. It didn't give satisfactory service, and they stopped running it. There was an engineer on it; there was an electrician. I started to run it instead of the engineer because that engineer was not there the fall before. The reason I undertook to run a motor at that time across a canyon on a wire was that there was an electrician right there.

I was going to run it if it would run, I was  
127 going to test it anyhow. I don't remember if

I was assigned the duty of running it at that time. The master mechanic put me to work to run it at that time. I had not been working with the master mechanic there. I had been running a little water pump. That pump was operated by steam. I was running the pump. I just took the



(Testimony of P. R. Sheaff.)

steam direct from the boiler that stood there close to  
it. That boiler was not connected with steam  
128 engines in some other part of the plant. The  
steam in that boiler was made by a fire of wood  
in the boiler. I operated that; I [125] did that.  
I operated that boiler and got my steam to run my  
water pump with it. I did that kind of work just a  
few days, a few nights. I was on night shift; when  
I went up there I got this job as night watchman, and  
to keep this pump cleaned out of water. In connec-  
tion with my duties as night watchman, I had to fire  
this boiler and had to run this pump. I did  
129 this, I should judge, a couple of weeks, some-  
thing like that. Around that place, I also ran  
a little steam hoisting engine that operated the swing-  
ing boom derrick; and I worked at other jobs; I  
helped the blacksmith around there. I guess that is  
about all. I operated the engine that ran the derrick  
about two months in 1907. I had to run the steam  
engine and had to handle the levers in order to oper-  
ate the derrick. I had entire charge of that work, so  
far as running it. They did not have any elec-  
130 tric appliances there in 1907. They did in 1908.  
In 1908 they had a little steam engine that ran  
a generator to operate this motor on this crane. The  
electrician had charge of that steam engine and that  
generator. I didn't do any work on that. I didn't  
do any work at all around that steam engine or  
around that generator. I don't remember how the  
wires were carried from the generator to the motor.

(Testimony of P. R. Sheaff.)

I don't think I ever knew. I was not present  
131 while the electrician was setting up that machinery there. I helped the blacksmith. They used to use cars there to haul rock out into this dam, and dump the rock, and they would take railroad iron and cut it in lengths of about five feet, and then they would cross them, and then they would rivet these irons, and then they would put big heavy rocks on these flat cars; that was what I was helping the blacksmith to do. There were three across this way, and several this way (illustrating), and then the middle one [126] underneath would set in a socket at each end of the car, and then they could tip it  
132 easily; and then there was a toggle and hook to hold it, so when the man went to unload it he could hit this toggle, and it would tip this; the weight of the rock would tip over, you see, and fall down in the dam. I worked on one or two of these contrivances after I left there. I went to the Desert Power and Mill Company and my next employment after leaving the Desert Power and Mill Company April 20th, 1911, that had any connection with machinery was with the Pacific Power Company.  
133 I was employed by the Pacific Power Company along about April, 1911. I was employed first in Hawthorne. The first work I did at Hawthorne, we carried a lot of crates with insulators in them up to the door of the warehouse and labelled them with paint—painted letters on them. As near as I can remember we painted on them "Pacific Power Company, Fallon, Nevada." Those insulators were just



(Testimony of P. R. Sheaff.)

like those on the model there, only they were larger. They must have been about that big (illustrating),  
about a foot across the top. That was the  
134 general form of them, what appears on the  
model there. It looks like them. Those insulators were to go on the poles to lay the wires on, to carry the wires. They were called insulators because they insulate, I presume. The object was to insulate the wire from the pole to keep the electricity from escaping, I suppose it is. I knew they were insulators at that time and that was the object and purpose of them. When I saw them at Hawthorne I recognized them. I knew what they were; I had  
seen the same things just a couple of months  
135 before that. I had never taken any notice of  
them before, only two or three months before. Those insulators taken from Hawthorne to Fairview, you understand [127] we put them outside the door so that the teamster could come along and load them on this wagon and take them over to the depot seven miles away to Thorne and then they went by train over to Fallon. I accompanied Mr. Johnson to Fairview. The first work that was assigned me was to dig some holes. I presume that my duties were whatever he told me to do. My wages were  
agreed upon when he employed me, and my  
136 wages were four dollars a day, for a day of  
eight hours, and if I worked over time, it would be fifty cents an hour extra. That line into Fairview ran from the main line that ran to Wonder, from over around Bodie some place. I presume that

(Testimony of P. R. Sheaff.)

was the main power line of the Pacific Power Company. That was what I understood it to be at that time. They started to build a line from this main line over to the substation at Fairview. Fairview is a town situated out in that section somewhere.

137 There are two Fairviews. There is old Fairview and the present Fairview. This substation was up on the hill, up by the mine and mill and the town, and the present town is down below about a quarter or half a mile, down a very steep hill. The substation was up on the hill from the new town, and the old town was a couple of miles from there. The town of Wonder, with reference to Fairview, was about sixteen miles farther on. It is about northeast of Fairview. There is a good

138 wagon-road between those places. The distance to be covered by this line that was to be run from the main power line to the substation at Fairview, I think was about a little over two miles, and this power that was to be carried on that new line was to be used at the Nevada Hills Mine and Mill in Fairview. The Nevada Hills Mill was about two hundred feet from the substation. The mill and the shaft are practically connected, that is, they are so close to each other that it [128] is all the one thing, you might say. There was another

139 substation that belonged to the mining company. I was running this line from the main line to the Pacific Power Company substation. I think Mr. Johnson was right there during all the time that two miles were being put in. I ran a telephone



(Testimony of P. R. Sheaff.)

wire at the same time. That was in the same line I was describing yesterday when I said the telephone wires were carried along parallel about thirty feet from the power line. It was about the same. I didn't help dig all of the holes. There was a gang of us. I helped place the poles. I helped  
140 lay the wires. I think I helped place the insulators on the poles, although I don't remember clearly. I assisted in laying the wire upon the insulators. I had been instructed to do that work by Mr. Johnson. He described it, told me how to do it. Just about the time we had to lay the wires up there, he told me how to tie them, and directed me what to do and told me how to do it. I had difficulty in carrying out his instructions at first. I learned it, I suppose I did. I assisted in laying the wire  
141 during the whole length of the two miles, that two mile line. I think I was there while the connections were being made with the main power line, I don't remember clearly. I can't remember if I was present when the connections were made at the other end with the substation. I think I was working around there when they were connected. I don't remember seeing them connected, but then I think I was working around there. Well, I was sure of their being connected up and of the power being  
142 turned on. I was not sure that the power was turned on after that line was built, but I would surmise that it was. The first time the power was turned on was about two months before the accident. That power was to be carried over that line

(Testimony of P. R. Sheaff.)

and into the substation [129] for use by this Nevada Mining Company. I had been up to the Nevada Hills Mining Company's property. I knew they had a stamp-mill there and all the other stuff that goes with it—whatever was necessary to operate their mining property there. So far as I know, they were running all their mechanical appliances  
143 there by electricity. They were receiving that electricity directly from their own substation, and their substation was in turn receiving its electricity from the Pacific Power Company's substation at Fairview. This same substation that this line I had built connected with. In a word, this Nevada Hills Company received its power from the main line of the Pacific Power Company, the power being carried along this line that I assisted, as I have described, from the Fairview substation to the Nevada Hills own substation, and from their own substation to their mechanical appliances, what-  
144 ever they were. I don't think that power was turned in through the Nevada Hills substation about two months before I was hurt. I think it was turned into the Fairview substation about two months before I was hurt, but I could not say how long before I was hurt it was carried through the Nevada Hills substation, but I knew it was carried there some time before I was hurt, that is, through the Nevada Hills substation. I spoke this morning about a pole that stood out to the west of the model that was shown, and from which a guy wire ran in



(Testimony of P. R. Sheaff.)

towards the lightning-arrester. That guy  
145 wire came from one of the power poles that  
was carrying the wires which led into the sub-  
station. That power pole from which this guy wire  
came was one of the poles that I myself and my co-  
employees had assisted in putting in,—that was a  
part of the line that I helped construct, and those  
wires being carried along that power line were the  
wires that I [130] myself had helped to place  
there. There were three of those wires, and those  
three wires would be the wires that would connect  
up with these three wires that are shown upon  
146 this model that was shown me this morning.

The process would be for the power to be car-  
ried along each of those three wires through these  
wires running along the top of the model and into  
the substation. I suppose the purpose of the sub-  
station was for distributing power. In the substa-  
tion there were some things they called transformers.  
There was a switch-board with some instruments on  
it, and I guess that is about all. There were three  
transformers there in that substation. I presume a  
transformer for each of the power lines running into  
the substation, I would not be sure. After  
147 I had finished with that work that I have de-  
scribed in building this line which carried  
power into this Fairview substation, I went to work  
at the Fairview substation itself. I was assisting  
Mr. Halpenny in placing these transformers and  
handing him tools. I assisted Mr. Halpenny in  
setting up the transformers in the same Fairview

(Testimony of P. R. Sheaff.)

substation. I think I did that work after all the connections had been made preparatory to putting the power into the substation. I think it must have been about three weeks that work took to install the transformers. I didn't know at that time

148 what was the purpose of the transformers. I

knew that electricity was carried into the transformers and I knew the wires went out over to the other company's substation. I think there were transformers in that substation, and I presume the electricity went over those transformers before being used at that mine. After I had completed that work

with Mr. Halpenny of installing the transformers, I went to Wonder with him. My work under Mr. Johnson ceased [131] about the time the line was

completed to the substation in Fairview. I

149 don't remember if the power was turned on

that line and into the substation before I quit

Mr. Johnson. If it was not before I quit Mr. John-

son, it might have been a week or two after. I would

not pretend to say, but I think I could safely say

that it was not more than two weeks at the outside.

The power must have been turned in before the

transformers were set up. When I went to Wonder

the work was about the same nature as it had been in

Fairview. The work was around the Wonder sub-

station. I think the Wonder substation had

150 just been built when I went there. It prob-

ably had not the finishing touches, but the

building was there. The line was then built from the



(Testimony of P. R. Sheaff.)

main power line into the Wonder station. That was the end of the line and the substation was just being completed. That substation was supplying the mine and the mill in Wonder and the electricity that came through the substation did not go to any other substation before being used. It went direct to the mine and mill at Wonder from the power company's substation, the only substation there. When

151 I went to work at the Wonder substation the first work was moving around and placing these transformers, and then after that we built a line—no, I guess, after that I helped Mr. Halpenny build that lightning-arrester at Wonder. The power must have been turned in to that substation at Wonder before the transformers were installed. I don't think the power was already turned into the Wonder substation when I went there, but pretty soon after I went there. I think the electricity was turned on soon after we got there. It was turned on to wires

that were carried into the Wonder substation  
152 in some fashion similar to the way it was carried into the Fairview substation. After I assisted Mr. Halpenny [132] in installing the transformers at Wonder, I assisted him in building a lightning-arrester. I did not assist him in building the lightning-arrester at Wonder before I did any more work over at Fairview. I *work* on the lightning-arrester at Fairview before working on the lightning-arrester at Wonder. I think it was about the time that I finished that work of assisting

(Testimony of P. R. Sheaff.)

in installing the transformers at Wonder that  
153 I went to Fairview and worked on the lightning-arrester. After we made that trip to Fairview, I built these other lines that I spoke of this morning that I was assigned to build myself. In installing the transformers at the Fairview substation I was working under Mr. Halpenny's orders, but I didn't exactly work with him. While the lightning-arrester at Fairview was being constructed, I was around the other side of the building, and off to this side, cleaning up the substation, doing whatever work I was assigned to do in that neighborhood. I did some work on the lightning-arrester itself, and I did some work in the substation  
154 at that time. I should judge, it must have been four or five weeks or six before I was doing that work that the power was turned into that substation. The power had been turned into this Fairview substation through these wires about four or five or six weeks before this lightning-arrester was built at all. I knew that. I knew that that power was carried into that substation by means of these three wires shown and described in this model. In connection with constructing the lightning-arrester at Fairview, I helped dig the holes—  
155 the two holes in the center here, for the posts or supports of the lightning-arrester. These four poles that appear in the model here, the end of the model, were put up earlier. They were put up about the time [133] I assisted building the line



(Testimony of P. R. Sheaff.)

itself. They were put up for the purpose of carrying the wires themselves into the substation. This model is incorrect where it puts the poles or posts on the easterly side, those poles or posts should be represented by the wall of the substation itself. This

other model which you use for the purpose of  
156 illustration appears to be a fair representation of the easterly end of the substation.

These three wires that were represented on the model shown me this morning would correspond with the three horizontal wires at the top of this other model, and following them along, they would be carried into the gable end of the substation at these points indicated by these small circles here which look like targets. Then there was an appliance coming out from the gable end of the substation upon which insulators rested practically as shown in

this model that you are now exhibiting to me.

157 The wires were taken from the power poles themselves and carried into this structure.

That is the structure that is on the opposite side of the lightning-arrester from the substation. There were some insulators on there but I don't know how they were placed. I don't remember just where the switches were. There was pipe coming down there, this thing here, this switch, and there was a handle there used for the purpose of operating the switches which disconnected the wires above here or connected them as they desired. When these were disconnected I presume that the power was shut off

(Testimony of P. R. Sheaff.)

from the substation, and when these were  
158 connected the power was carried into the sub-  
station. This part of the structure was com-  
pleted up to the point where the lightning-arrester  
is about the same time I completed the line from the  
main line into the substation. Upon the lightning-  
arrester [134] itself, I bored some holes with a  
brace and bit in these timbers, those you represent  
there, the horizontal timbers appearing on the light-  
ning-arrester. I bored some holes for the purpose of  
putting these pins down through on which the  
159 insulators were built or placed. I did not  
assist in putting on any of the insulators.  
During the time that lightning-arrester was being  
built, I was working around under Mr. Halpenny  
and was within call to do whatever I was directed to  
do. He could get me at any time. I worked on that  
lightning-arrester at that time, oh, probably twenty  
minutes, possibly half an hour. The other kind of  
work I was doing about there was squaring up and  
cleaning up around the sides of the substation, and  
on the inside, and straightening things around.

This substation was built practically on the  
160 top of a hill or knoll. It was practically level  
because there was a road running past there  
and that was practically level, but it was not level  
like the floor. On the opposite side, the back end of  
the substation, was level out to along about in here  
somewhere from the building (indicating on model).  
Where this lightning-arrester was built, the ground  
began to slope along in here, along about where the



(Testimony of P. R. Sheaff.)

posts were, and then continued to slope out along down the hill. Beyond this structure here it sloped down pretty steep.

(Points of the compass are marked on defendant's model.)

161       The land sloped on the westerly side of the substation and kind of towards the northwest. It did not slope immediately. It would be over this way, kind of off this corner. I didn't assist in building a fence around this [135] arrester. I don't think I was there when it was being done. I don't know when that fence was put there. It was not there at the time I did this work I spoke of in the construction of the lightning-arrester. I first saw that fence there on the morning of the 18th of  
162   July, 1911. When I arrived there in the morning of the 18th of July, I saw the lightning-arrester fenced in. I had to remove some of the wires, take the staples out, to get into the enclosure where the lightning-arrester was. I think I next went back to Wonder, the same evening, or the next morning after that lightning-arrester at Fairview was built. At Wonder, I helped put up a lightning-arrester there, and put up a line there up to the mine in Wonder. I did not build that line myself from the Wonder substation up to the  
163   mine. I didn't build a line myself, I had men helping me. I was in charge of it under Mr. Halpenny; under his direction. He directed me to build that line. He didn't give me certain men to assist me. There were men helping me and I took

(Testimony of P. R. Sheaff.)

charge of the building of that line. That line was built from the Wonder substation to the Wonder Mining Company's mine, about a quarter of a mile. I carried three wires from the Wonder substation to the mine. I don't know who superintended the digging of the holes for that installation. I  
164 dug some of them. I directed the putting up of some of the poles. I laid the wires on those poles. I personally laid the wires on that line from the Wonder substation to the mine. I placed the insulators. I attached the wires to the insulators. That work was done after I assisted with the lightning-arrester at the Wonder station. The lightning-arrester at Wonder was not built upon the same plan and did not have the same general appearance as the one at Fairview. It [136] was placed a  
165 little differently. It was built entirely different from that. There were pipes on it. I guess the pipes carried down from the power wire making a turn over an insulator and then breaking off was the same construction at Wonder as at Fairview. They had on the opposite side these dead wires running from no wire and running down this arm and turned pretty close to the wire or pipe connected with the power wire,—that was the only similarity between the two. I think it had practically, although differently placed, the same sets of wires as the one at Fairview. I don't know whether this wiring was done before I left Fairview. I  
166 think those pipes were up there. I think they were running from the lightning-arrester up



(Testimony of P. R. Sheaff.)

to this insulator, and at any rate up near the power line. That work had been done before I went back to Wonder to do the other work. I think these opposite wires, these wires without connections, had been put up at that time in Fairview. So far as I know, this lightning-arrester at Fairview was complete when I left there to go up to Wonder. The wires from the end of these, short dead wires carrying to the ground, were not on at that time.

167 I don't remember seeing them. I didn't assist in putting on the pipes on the Wonder lighting-arrester. I don't think I put on any of the insulators. I don't remember of it. I was up there when that work was being done. I remember moving the transformers around on bars in the Wonder substation. I don't remember in assisting in cleaning them. I know Mr. Greenleaf. I don't remember when Mr. Greenleaf came to the substation at Wonder. I don't remember ever seeing him at the substation at Wonder. I remember seeing

168 him at the substation at Fairview. I could not say if he did any work about the substation at Fairview while the lightning-arrester was being constructed, or thereabouts, because [137] I don't know. I don't think the lightning-arrester at Fairview was completed before I was injured. I don't know whether they ever did any more to it between the time we left Fairview and the time that I came back to Fairview. About five weeks elapsed between these two periods. When this lightning-arrester at Fairview was being put up I don't re-

(Testimony of P. R. Sheaff.)

member if the Nevada Hills Mine was operating or not. I think power was being furnished to the mine about that time. I presume that power was being furnished to that mine through this Fairview substation about the time this lightning-arrester was being built. I do remember Mr. Greenleaf being at Wonder. It must have been several weeks before my accident. I don't remember seeing Mr. Greenleaf about the substation. I don't remember whether I was one of three to take a shift of eight hours each in doing some work upon the transformers, cleaning the transformers at the Wonder substation. I don't remember that work of cleaning the transformers at all. I don't  
169 remember Mr. Greenleaf out at that substation in Wonder. I can't remember what I was doing about the time that Mr. Greenleaf was at Wonder. I was frequently in the substation at Wonder. I was there while it was in operation, while the power was passing through it. I left Wonder just about the time the line was finished. I don't remember if I was there while the transformers were operating. Work was done in the Wonder substation drying out the transformers. I  
171 assisted in that work. I helped dry them out. All I had to do was throw the switch or the lever on the switch-board and stay there and take the temperatures. Well, they had thermometers, glass thermometers, and I think we lowered them with a twine down into the transformer, and left them there for—that is right, we left them hanging



(Testimony of P. R. Sheaff.)

there, and [138] then every so often, we would go and pick them up and look at them, and read the temperature, and if I remember right, we marked it down, I think, the temperatures. The transformer looked like a big tank. There  
172 was a lot of iron stuff inside of it. I didn't see any wires, it was mostly the thing that went inside the tank was covered up by a piece of compboard—a stiff paper. We used electricity in drying out the transformers. The electricity was used for the purpose of creating heat in the transformer. I would use the switch-board in turning on or off the current so as to get the amount of heat that I required, and for that purpose, I took the shift in handling the switches, in turning them  
on and off, and in keeping the proper tem-  
173 perature in the transformers, while this drying process was going on. I think I did take a shift by myself on that work. I could not be sure whether there were others that took other shifts so as to keep that work up during the whole twenty-four hours while that drying process was going on. I worked more than eight hours sometimes, on that shift. I don't know how long I worked at that work, whether it was just an eight-hour shift or not. I don't remember how long altogether I worked at drying out the transformers by means of elec-  
174 tricity. There was only one switch to handle on that switch-board in the transformer. If I remember right, that switch would not catch right, or something; sometimes if you would push it down,

(Testimony of P. R. Sheaff.)

it would not stay down. Other than that defect in the switch itself, I had no difficulty in operating it in the least. I knew how to turn on and turn off the electricity by means of that switch, and I knew the purpose of changing the switch; that it was either to turn on or turn off the electricity. I guess  
175 behind the switch-board there were exposed electric wires. I presume I kept myself from contact with those wires [139] during the time I was doing that work.

Mr. CANNON.—Q. You were careful, in other words, to keep your hands and your person away from those live wires, weren't you?

A. Well, I don't think there was any necessity of getting near them.

Q. At any rate, you didn't make any effort to get in contact with any of those live wires, did you?

A. I don't think so.

Q. In other words, you knew enough about electricity at that time not to get into contact with a live wire, didn't you? A. Yes.

176 WITNESS.—(Continuing.) I don't remember how long altogether I worked at drying those transformers. I have been in substations while the transformers were working. I know they make some kind of a noise, a kind of hum. To the best of my recollection, that noise, you would not be able to hear very far away, not outside of the building. I think you can very readily hear it inside of the building. Inside the transformer station it is a sound that can be readily detected by anyone who



(Testimony of P. R. Sheaff.)

has heard it before. The sound is not such  
177 that it can be easily heard outside of the building and for quite a distance from the building. The sound is a kind of a purr. I don't know whether I would be able to recognize that sound or not. Prior to my accident, I had heard that purring sound in Fairview, that morning, when I went in there to get the pick and shovel. I don't remember clearly that I heard that purring sound in the substation at Fairview that morning, but I suppose I did. I presume I heard it. That morning I went over  
178 to the mill, I don't think that the [140] mill was in operation that morning. They were doing construction work on it. If they were using any motors around there, I didn't see any. Before I went to Fairview on the morning of the accident, I didn't see Mr. Halpenny. I saw him the night before at Wonder, and it was the night before that he directed me to go to Fairview. He told me to go over there and get some clamps made, and to dig some holes, and put these blocks in, and he  
179 would be over and finish up the job. I know I didn't take the concrete blocks along with me. Those clamps had not been ordered before I went over. There was a blacksmith in or about there at the Fairview substation, and the blacksmith's place was over near the shaft of the Nevada Hills people. Mr. Halpenny did not tell me to go over to the blacksmith and get the clamps. I don't know the purpose for which those clamps were to be put around these cement blocks. For the purpose

(Testimony of P. R. Sheaff.)

of connecting the wires with them in some way, I  
suppose. I didn't order the clamps that  
179 morning from the blacksmith directly. I  
went to see Mr. Fleming. I think he was  
called the Construction Engineer of that mill. I  
don't remember of telephoning to Wonder to Mr.  
Halpenny before being injured on that morning.  
There was a telephone in the substation at Fairview.  
I helped construct that telephone line about the  
same time I had helped construct the power line. I  
don't remember calling up Mr. Halpenny that morn-  
ing. I have no recollection of calling up Mr. Hal-  
penny and telling him that the clamps were not yet  
done, were not yet finished. The night before  
180 I went to Fairview, the night before the acci-  
dent, Mr. Halpenny told me to go over there  
and get these clamps made and dig these holes under  
these arms, the arms closest to the switch, he said,  
and did the holes, and put these blocks in, and he  
would be over there to finish up. He says, "I will  
be over to-morrow afternoon or the morning after."  
I presume I was [141] to put the clamps on the  
blocks. He told me to dig the holes on the side of  
the lightning-arrester closest to the switch I think,  
and the switch would be on the side farthest  
181 away from the substation. He told me to dig  
holes underneath those rods—those pipes—un-  
derneath those curved pipes, and to put the concrete  
blocks in the holes and the clamps on the concrete  
blocks. He did not tell me not to touch the wiring  
in any way, that he would be over the next morning,



(Testimony of P. R. Sheaff.)

or the next day, to finish the work himself. He told me to do nothing more. He told me he would be over to finish it. Those instructions I have given you now were the only instructions he gave me as  
182 to any work I was to do. He did not give me any instructions to touch any wire at all. He did not give me any instruction to connect any wire or disconnect any wire. My work, so far as he gave any instructions concerning it, consisted in directions to dig those holes at the places indicated, insert the concrete blocks, and fasten the clamps to the concrete blocks. As far as he told me, that was all I was to do. I received no directions from any other source to do any other work on that day. He  
183 did tell me at that time that he would be over to finish up the work. (The witness' attention was thereupon called to the model produced by the defendant in court concerning which the witness was asked some questions on the day before.) I observe that there are certain wires coming down from the main power wires above and connecting with the lightning-arrester. Upon the lightning-arrester that was built at the Fairview station these were not wires, they were pipes. Those pipes were  
184 half inch pipes. On one side of the lightning-arrester, the side on which I worked on the day of the accident, I don't know that those pipes were connected with the main wires above. I don't think I was working around there when they put the wire up there. I don't remember [142] that I was present when Mr. Halpenny was doing the wir-

(Testimony of P. R. Sheaff.)

ing on this lightning-arrester and using a block of wood between the pipes which are not connected and the pipes which are connected so as to keep the proper distance between these two wires. I don't remember that. I don't remember that I was not there at that time; that is as far as I could say.

185 Mr. GEDNEY.—I would like to ask which lightning-arrester you are talking about, Fairview or Wonder?

Mr. CANNON.—At Fairview; and I am calling his attention to the model of the Fairview station, produced by the defendant.

Q. The point where the pipes which are not connected with the feed-wires above—the point where those three pipes were connected to the lightning-arrester, and to the framework near it, was in plain view, was it not, from the lightning-arrester, and from practically all points surrounding the lightning-arrester?

186 A. Well, they would be, if you looked up to them you could see them.

WITNESS.—(Continuing.) While I was working around there, in the neighborhood of this lightning-arrester, and doing what I did in assisting in the construction of it, I could not have seen, if I cared to look, just how these pipes were attached and insulated, because what work I did on that lightning-arrester was done before the frame was put up. I think Mr. Halpenny and I went back to Wonder together after the lightning-arrester was constructed, and I remember at that time that  
187 this wiring was done. There was nothing



(Testimony of P. R. Sheaff.)

there to prevent me seeing the manner in which the wiring was done. I got kind of sick that afternoon up there and I don't remember a great deal the day they worked on that piping. I think the whole thing was put up in one day. I don't remember as to whether the fence was put up before Mr. Halpenny and I left for Wonder— [143] I don't think it was. To a person standing anywhere in the neighborhood of this lightning-arrester I don't think there was anything to prevent him from seeing, if he had looked, how these connections and at-  
188 tachments of all these pipes and wires were made. I don't think there was any obstruction or impediment to my observation. I think if you looked up you could see it. So far as these lower connections were concerned, I don't think you would have to look up to see them. On this model produced by the defendant, these small posts here, put loosely in these holes, would represent these concrete posts that I went over there to dig the holes for, and to put in.

Mr. CANNON.—Q. You testified yesterday  
189 concerning assisting in drying out the transformers in the Wonder station; do you remember assisting in doing that same character of work in the Fairview station? A. Yes.

WITNESS.—(Continuing.) I can't say whether the drying out of the transformers in the Wonder station took several days. I don't remember that. I don't remember if it took quite a while in the Fairview station. I think I took my shift at the Fair-

(Testimony of P. R. Sheaff.)

view station in the drying out process the same as I did at Wonder. I am not sure. I don't remem-

ber whether, in preparing for that drying out  
190 process of the transformers, both at Wonder  
and at Fairview, that certain temporary wir-

ing had to be done. I remember Mr. Halpenny wound a lot of telephone wire around a drum or something circular in order to get a big long coil of it, and then stretched it out. I remember that there was a galvanized iron tank there in which certain coils were placed and that wires were connected up with these coils for the purpose of producing heat to heat the oil. I remember that that is where these wires wound around the drum were put. He took a

galvanized iron tank that was borrowed [144]  
191 from somebody for that purpose. I think  
there was one or two coils in that galvanized

iron tank, I don't remember. I presume these coils were then connected up with electric wires from the power-house. I assisted him in winding this telephone wire. I was there working with him and doing whatever he told me to do in connection with that work. I do not remember that there was a transformer that was borrowed from somebody close

to there for the purpose of reducing the cur-  
192 rent for use in heating that oil. I don't re-  
member that there was an extra transformer  
there that that current went through to use, and  
that was reduced down to as low as 220 volts.

Q. But you remember that the electricity was put into these coils and that was used as a heating process



(Testimony of P. R. Sheaff.)

for heating this oil?

A. Yes, the oil got hot I remember.

WITNESS.—(Continuing.) The oil was used I suppose after the transformers had been dried out; that is my recollection that the oil was being heated for the purpose of being used in the transformers, and I suppose in order to get the water out. I  
193 operated the switch in the Fairview station in this drying out process practically the same as I operated it in the Wonder station in the drying out process. Before going and looking at the thermometer I don't know as I did anything. I guess I did turn off the current. In going to look at the transformer I don't remember just where the live wires were. I turned off the current so I would not get burnt, I guess. I presume that Mr. Halpenny must  
194 have told me before going among these wires to take the temperature to turn off the current so I would not come in contact with some live wires. I don't recollect his telling me, but I suppose he told me or I would not know. [145]

Q. At any rate you knew that was the purpose of turning off the switch, so the wires would be dead when you went in there to take the temperature?

A. I didn't go any place.

Q. Well, you had to go some place, or look in some place, to look at the thermometer, didn't you?

A. No, not to look at it.

195 Q. Well, to pull it out—you pulled it out and looked at it?

A. Yes, it was fastened to a string—I just pulled

(Testimony of P. R. Sheaff.)

it out and looked at it.

Q. Now, you had to go to the tank, or place where it was, didn't you?     A. Yes.

WITNESS.—(Continuing.) In going to the tank, I came in close proximity to some of these live wires, and I knew then while I was doing that work in the substation, that transformer work, that the power was actually being used in the substation in some manner. I knew that the electricity was  
196 actually being conducted through these wires on a line that I had built into this substation. I also built a line myself from the Wonder substation to the mill, that was only right across through, just across from the station—right close to it. It was about one hundred feet from the Wonder station to the mill. I built that line myself and laid the wires. I strung them—tied them—wired them—insulated them, in whatever way they had to be tied or fastened to the insulators. I did not connect them up. I have never read anything on the subject of  
197 electricity. I may have read—not any technical article. I have not read the ordinary popular every-day literature that is published in relation to electricity. I have read nothing at all. I have not purposely avoided reading [146] articles on electricity. I wasn't particularly stuck on the subject of electricity. I don't remember whether Mr. Halpenny had some electric journals—articles on electricity, and so forth, about the place there. I never went to school any other place than in England. When I first was employed by Mr. Johnson



(Testimony of P. R. Sheaff.)

I was geting four dollars a day. I received checks for my pay.

198 Mr. CANNON.—Q. I call your attention to a check, Number 101, dated Fairview, Nevada, May 1st, 1911, and call your attention to the signature “P. R. Sheaf” on the back, and ask you if that is the first pay check that you received for working for the Pacific Power Company, or one of the first? (Hands check to witness.)

A. Well, I don’t remember the particular check; that is my signature on the back.

Q. That is your signature on the back, is it?

A. Yes, I would not say, though, as to the  
199 check, because I don’t remember; in all probability it is the first check I received.

Q. Well, you identify the signature on the back, so you collected the money represented by that check, didn’t you? A. Yes.

Mr. CANNON.—We offer this in evidence.

Mr. CURLER.—No objection.

The COURT.—It will be admitted then.

**[Defendant's Exhibit "A"—Check.]**

(The check is marked Defendant's Exhibit "A," and reads as follows:)

**"PACIFIC POWER COMPANY**

~~Not Negotiable.~~

No. 101. Fairview, Nev., May 1st, 1911.

Pay to the Order of P. R. Sheaff.....\$60.00

Sixty and no/100 .....Dollars.

200 Account of Fairview Distributing Line—

Labor 15 days @ 4.00 up to and including  
Apr. 30-11.

**PACIFIC POWER COMPANY,**

**By GEO. H. JOHNSON.**

**To PACIFIC POWER COMPANY. [147]**

**Bodie, Cal.**

(Stamped) **PAID Jun. 19, 1911. 53220.**

[Endorsed]: P. R. Sheaff. Pay Washoe County Bank, Reno, Nev. or Order. The I. H. Kent Co., I. H. Kent, Prest. Pay to the Order of Any Bank or Banker, The Anglo & London Paris Na-  
201 tional Bank, San Francisco, Cal. W-4. Pay to the Order of The Anglo & London Paris National Bank, Washoe County Bank."

**WITNESS.**—(Continuing.) While I was working under Mr. Johnson I was laboring all the time. I didn't work as a lineman as I understand the term.

**Mr. CANNON.**—Q. I show you a check, number 117, dated Fairview, Nevada, May 14, 1911, and ask you if you identify that check, and if you identify the signature "P. R. Sheaff" on the back of the check? (Hands check to witness.)



(Testimony of P. R. Sheaff.)

A. Yes, that is my signature all right.

Q. You received the money represented by that check, did you?     A. Yes.

202     Mr. CANNON.—We offer the check in evidence.

Mr. CURLER.—No objection.

(The check is admitted in evidence, marked Defendant's Exhibit "B," and reads as follows:)

**[Defendant's Exhibit "B"—Check.]**

**"PACIFIC POWER COMPANY**

~~Not Negotiable.~~

No. 117. Fairview, Nev., May 14th, 1911.

Pay to the Order of P. R. Sheaff.....\$60.00

Sixty and no/100 .....Dollars.

Account of Fairview Distributing System.—6 days labor @ 4.00 in May up to and including 8 days Lineman @ 4.50 May 14–11—Paid in full.

PACIFIC POWER COMPANY,

By GEO. H. JOHNSON.

To PACIFIC POWER COMPANY

Bodie, Cal.

203     [Endorsed]: P. R. Sheaff, Pay to the Order of Pacific Power Co., by I. H. Kent, Pres."

Mr. CANNON.—(Q.) You received the eight days' pay mentioned in the check at four and a half per day, did you, Mr. Sheaff?

A. I could not say, because I have no record of it.

Q. I call your attention to a check dated Bodie, California, [148] 6/1/1911, and ask you if you

(Testimony of P. R. Sheaff.)

identify that check, and if it bears your endorsement?

(Hands check to witness.)

A. Well, that is my signature on the back.

204 Q. You received the money represented by that check, did you?

A. I suppose I did, yes.

Mr. CANNON.—I offer this check in evidence.

Mr. CURLER.—No objection.

(The check is admitted in evidence, marked Defendant's Exhibit "C," and reads as follows:)

**[Defendant's Exhibit "C"—Check.]**

**"HYDRO-ELECTRIC COMPANY**

**~~Not Negotiable.~~**

Bodie, California, 6-1-1911.

68

Pay to the Order of P. R. Sheaff.....\$84.00

Eighty-four and no/100 .....Dollars

Account of Fairview Sub Equipment—Twenty-one days up to and including May 31, 1911.

**HYDRO-ELECTRIC COMPANY,**

**By R. H. HALPENNY.**

205 To HYDRO-ELECTRIC COMPANY,

Bodie, Cal.

Stamped PAID, Jul. 12, 1911.

[Endorsed]: P. R. Sheaff. Pay to Nixon National Bank. V. L. Adams. Pay to the Order of any Bank or Banker. The Nixon National Bank, Reno, Nevada."

Mr. CANNON.—Q. Mr. Sheaff, the words "Fairview Sub Equipment" means Fairview substation equipment, doesn't it?



(Testimony of P. R. Sheaff.)

A. I could not be sure as to that, no.

Q. At least that is the place you were working during the time that you earned the money represented by that check, at the Fairview substation?

A. Presumably so, yes.

206 Q. I show you another check, dated Bodie, California, 6-30-1911, number 69, and ask you if you identify that check, and the endorsement "P. R. Sheaff" on the back of it? (Hands check to witness.)

A. Yes, that is my signature. [149]

Q. And the other endorsement on the back of it, "G. M. Gardner," do you identify that signature?

A. Yes, I have seen that signature.

Q. That is Doctor Gardner's signature, is it?

A. Yes, that is Doctor Gardner's.

Q. You received the money represented by this check, did you? A. Yes.

207 Mr. CANNON.—I offer it in evidence.

Mr. GEDNEY.—No objection.

(The check is admitted in evidence, marked Defendant's Exhibit "D," and reads as follows:)

**[Defendant's Exhibit "D"—Check.]**

**"HYDRO-ELECTRIC COMPANY**

**Not Negotiable.**

Bodie, California, 6-30-1911.

69

Pay to the Order of P. R. Sheaff.....\$116.00  
One Hundred Sixteen & no/100.....Dollars.

(Testimony of P. R. Sheaff.)

Account of Wonder Sub Equipment—29 days @  
4.00 up to and including 6/30/11.

HYDRO-ELECTRIC COMPANY,

By R. H. HALPENNY.

To HYDRO-ELECTRIC COMPANY,

Bodie, Cal.

208 (Stamped) PAID Aug. 19-1911. 499.

[Endorsed]: P. R. Sheaff, G. M. Gardner.

Pay to the Order of Nixon National Bank, Reno,  
Nevada. Churchill County Bank, Fallon, Nevada.  
Pay to Yourselves or order The Nixon National  
Bank, Reno, Nevada.”

Mr. CANNON.—Q. I show you a check, number  
118, Wonder, Nevada, 6-30-1911, and ask you if you  
identify that check, and the endorsement on the  
back. (Hands check to witness.)

A. Yes, that is my signature on the back.

Q. You received the money represented by that  
check, did you?

209 A. I suppose I did, yes.

Mr. CANNON.—I offer it in evidence.

Mr. CURLER.—No objection. [150]

(The check is admitted in evidence, marked De-  
fendant's Exhibit “E,” and reads as follows:)

**[Defendant's Exhibit “E”—Check.]**

“PACIFIC POWER COMPANY

~~Not Negotiable.~~

No. 118.

Wonder, Nev. 6-30-1911.

479M.

Pay to the Order of P. R. Sheaff.....\$22.00  
Twenty-two & No/100 .....Dollars.



(Testimony of P. R. Sheaff.)

Account of Wonder Distributing System—51½ days @ 4.00 up to and including 6/30/11.

PACIFIC POWER COMPANY,

By R. H. HALPENNY.

210 To PACIFIC POWER COMPANY

Bodie, Cal.

(Stamped) PAID Aug. 9, 1911.

[Endorsed]: P. R. Sheaff, V. L. Adams, C. L. Benodum. Pay to the Order of Nixon National Bank, Reno, Nevada, Churchill County Bank, Fallon, Nevada. Any Bank or Banker, The Nixon National Bank, Reno, Nevada.”

Mr. CANNON.—Q. I show you a check dated Bodie, California, July 31, 1911, number 72 on the face of it, endorsed “P. R. Sheaff, L. W. Justice,” and ask you if you identify that check and the endorsements thereon? (Hands check to witness.)

A. Yes, that is my signature on the back.

211 Mr. CANNON.—I offer this in evidence.

Mr. CURLER.—If your Honor please, we object to this check upon the ground that it appears there are certain erasures upon the check, which are unexplained at the present time.

Mr. CANNON.—Counsel has just called my attention to the words printed on the margin “Not Negotiable,” with a line drawn through them. The check is not offered for anything in connection with this mark, but is only offered so far as the face of it is concerned, the amount of money paid to Mr.

212 Sheaff, and for what it was paid; and [151]  
I limit the offer to that part of the check that

(Testimony of P. R. Sheaff.)

bears upon the amount of money received by Mr. Sheaff, and for what it was paid to him. We offer it in that limited manner.

The COURT.—It will be admitted.

(The check is marked Defendant's Exhibit "F," and reads as follows:)

**[Defendant's Exhibit "F"—Check.]**

**HYDRO-ELECTRIC COMPANY,**

**~~Not Negotiable.~~**

Bodie, California, July 31, 1911.

72 M.

Pay to the Order of P. R. Sheaff.....\$23.00

Twenty-three and no/100 .....Dollars.

213 Account of Wonder Sub Equipment—Electric helper @ 4.00 (5 3/4 days), to and including July 31, 11.

**HYDRO-ELECTRIC COMPANY,**

**By R. H. HALPENNY.**

**To HYDRO-ELECTRIC COMPANY,**

**Bodie, Cal.**

(Stamped) PAID Oct. 4, 1911.

[Endorsed]: P. R. Sheaff, L. W. Justice, Pay to the Order of ——— National Bank, Reno, Nevada. Churchill County Bank, Fallon, Nevada. Pay to Yourselves or order The Nixon National Bank, Reno, Nevada.

Mr. CANNON.—Q. I show you the next check, number 121, Fallon, Nevada, July 31, 1911,  
214 and ask you if you identify that check, and the endorsements appearing thereon? (Hands check to witness.) A. Yes.



(Testimony of P. R. Sheaff.)

Q. You received the money represented by that check, did you?     A. Yes.

Mr. CANNON.—I offer this check in evidence, with the same exception as in the other case.

Mr. CURLER.—We desire, if your Honor please, to interpose the same objection. The check appears to have certain erasures on it, which are unexplained.

The COURT.—The same class of erasure?

Mr. CANNON.—The erasure is the same as the one on the last check; the words “Not Negotiable” printed across [152] the edge, and scratched  
215     out. I am not offering that part of the check.

The COURT.—The ruling will be the same as to the last check.

(The check is marked Defendant’s Exhibit “G,” and reads as follows:)

**[Defendant’s Exhibit “G”—Check.]**

PACIFIC POWER COMPANY

~~Not Negotiable.~~

No. 121.

Fallon, Nev. July 31, 1911.

602 M.

Pay to the Order of P. R. Sheaff, . . . . . \$57.15  
Fifty-seven and 15/100. . . . . Dollars.

Account of Wonder Substation & Wonder  
216     Distributing System—Helper @ 4.00 2-¾  
days; lineman @ 4.50 10-¼ days—to and in-

(Testimony of P. R. Sheaff.)

cluding July 31, 1911.

PACIFIC POWER COMPANY,

By R. H. HALPENNY.

To PACIFIC POWER COMPANY,

Bodie, Cal.

(Stamped:) PAID Oct. 4, 1911.

[Endorsed]: P. R. Sheaff. L. W. Justice. Pay to the Order of Nixon National Bank, Reno, Nevada. Churchill County Bank, Fallon, Nevada. Pay to Yourselves or Order The Nixon National Bank, Reno, Nevada.

WITNESS.—(Continuing.) The last two checks offered, both dated July 31, 1911, I received after I was injured. I had employed Judge Curler as my attorney before cashing those two checks. I  
217 had employed him for the purpose of representing me in whatever proceedings I might conclude to take against the Pacific Power Company on account of my injuries. I referred those two checks to Judge Curler for his advise in relation thereto before cashing them and afterward cashed them on his advice. It is my best recollection that the work I was doing during the time I was receiving pay according to those checks, as line-man, was the building of those lines, stringing of the wires and installing them, and all that I have already testified to. [153] During the time  
218 I was under Mr. Halpenny in the Wonder substation doing this transformer work, and also in the Fairview substation doing the transformer work, Mr. Halpenny was from time to time direct-



(Testimony of P. R. Sheaff.)

ing me, giving me instructions as to how to do this work, and I was acting under his instructions in doing my work. I was taking my instructions from him. I don't remember of Mr. Halpenny, during that period, having spoken to me concerning my keeping away from the live wires in those two substations. I don't remember that he spoke to me about those

wires in the Wonder substation carrying  
219 sixty-six hundred volts. I will say that he did not speak to me about them containing 6600 volts. I don't remember of him, and I don't think he did. If he did speak to me about keeping away from those live wires I have no recollection of it. That is as far as I want to go. I do remember that he was giving me instructions as to how to do my work right along. I do not remember that

he was giving me instructions how to do it  
220 with safety to myself. I don't remember that

part of it—the safety part. I don't remember him telling me to cut off the power by means of a switch before taken the temperature in the transformer stations. I did not do it on my own responsibility because I know that was the thing to do, I presume he told me, that is why I did it. I don't remember Mr. Halpenny at any time warning me to keep away. I don't remember him at one time saying to me something in substance like this—‘Now,

Sheaff, I don't want you to think that I think  
221 that you are not competent to take care of yourself, but I want you to keep in mind that

(Testimony of P. R. Sheaff.)

you must keep away from these high-power wires, high-tension wires,' and that I said, 'Why I understand that, and I take it all right.' I do not remember any conversation in substance or effect as you have stated, or anything in substance that 'A man cannot be too careful around electrical [154] appliances and high-tension wires.' I did not know that a person could not be too careful about high-tension electric wires. I didn't know it was proper

to be careful about high-tension wires, not to  
222 touch them—I was working under his direction. If he had told me to keep my hands off I would have kept them off. I don't think I would have put my hands deliberately on a wire carrying a load of electricity. I don't remember having handled that switch at the Fairview station, the switch you have spoken of that disconnected this current from the substation. I would not say that I had not handled it, but I don't remember handling

it. I knew the office of that switch was to  
223 disconnect the power from the substation. I can't remember whether I did that thing at the Wonder substation, or not. I would not be sure one way or the other. I knew the office of that switch at the Wonder substation was to disconnect and connect up the power with that substation. At the time of my accident, I can't say that the transformers were working in the Wonder station; that was along about the middle of June and we went to Wonder somewhere about the first of June.



(Testimony of P. R. Sheaff.)

When I left Wonder to go to Fairview immediately prior to my accident, the transformers had been working in Wonder then. The transformers had been working for a couple of weeks, I suppose, and I had been accustomed to be in and out of the substation while the transformers were working. I suppose I had heard there this purr or burring noise when the transformers were working. I don't ever remember hearing that burr outside the substation, but I don't know just whether it was there, or whether it was in Fairview, but I have heard that hum and  
225 [155] I knew that sound, and I knew it at that time. I suppose, self-consciously, I would know that when that sound was present in a transformer that a current of electricity was passing through them. That was the general supposition that they were working and the electricity was passing through them, otherwise they would have been silent, I suppose,—otherwise the current could not go up to the mine or mill where it was being used. I understood that at that time. While I was doing this drying out at both the stations and while I was handling the switch doing my shift, I don't remember sparks forming when the switches would  
226 be changed. I don't remember ever turning that switch. In any of those switches that I did turn or that I did handle either at Esmeralda or at Fairview or Wonder I don't remember seeing the formation of an arc or a spark when the connection took place or when it was disconnected. I

(Testimony of P. R. Sheaff.)

have no familiarity with gasoline engines. When I went to Fairview on the morning of the accident, the fence was around the lightning-arrester. To the best of my recollection, it was not around it substantially as you see it represented here in the model

produced by the defendant. It seems to me  
227 that the wires ran from the corner of the building over to these two big posts on this side, on this switch, instead of going to the posts set in that corner there, but I would not be sure as to that. The fence surrounded the lightning-arrester apparatus and was built all around it. The purpose of that fence was to keep people off the company's property, I suppose. The company did not have any property outside of that fence. I do not know what

their property was. I do not know any other  
228 object of that fence—none at all. I knew that it surrounded this lightning-arrester. I don't think it did occur to me that [156] there might be any purpose in putting that fence around those wires. It didn't occur to me to consider whether or not that fence was put around that lightning-arrester because it was a dangerous contrivance. I never thought about that at all. I don't remember of thinking about it. I didn't know it was put around

there as a warning to people, and to keep  
229 animals from getting close to that lightning-arrester, because of the fact that there was a current of electricity there which might do injury to people or animals. I didn't know the purpose of that fence, I never gave any thought to that subject



(Testimony of P. R. Sheaff.)

at all that I remember. I don't remember of seeing any danger sign posted anywhere at the Esmeralda plant when I was working there. If I have seen danger signs posted in the Esmeralda power plant I have forgotten about them. I don't remember of ever seeing any danger signs posted in the Desert Power and Mill Company's plant. I don't remember, one way or the other as to that. I will  
230 not say there were not danger signs there. I don't remember whether there were any danger signs anywhere in connection with the Wonder substation, or not. It seems to me I have some kind of recollection of painting a danger sign myself. I did not under Mr. Halpenny's direction or at his request paint a danger sign at the Fairview substation. I think I did at the Wonder substation. I can't describe that danger sign; I forget about it, what was on it. I believe I painted it with  
231 black paint on a piece of board. I can't say for sure whether I wrote the word "Danger" on it. I do know this much, however, that I did paint a danger sign and my recollection is that it was at Wonder. I think I nailed that danger [157] sign when I painted it on the switch post at the Wonder station. Using this merely for the purpose of illustration now, that would be posted in the neighborhood of these two poles on this outside structure. I posted it there because Mr. Halpenny told me to. That was the only reason that I posted

(Testimony of P. R. Sheaff.)

it there, certainly. I thought it was to keep  
232 people away from the switch. I thought it  
was to keep them from monkeying with that  
switch. I thought it was just to keep them away  
from the switch so they would not bother it. At  
any rate to the best of my recollection I knew the  
danger sign was up and I made it and put it up my-  
self. I did not see any danger sign inside of the  
Wonder substation—I can't remember seeing any.  
I didn't see any danger sign on the door of the  
Wonder substation. I didn't see any danger sign  
on the inside of the Fairview substation. I  
233 didn't see any danger sign on the door of the  
Fairview substation. I don't remember of  
seeing any. I won't swear there was not a danger  
sign on the door of the Fairview substation; there  
may have been, if there was I did not notice it. On  
the day of my accident I did not see any danger sign  
in the neighborhood of the switch at the Fairview  
substation. On the morning of my accident, I don't  
remember seeing a large board in the neighborhood  
of the switch-board reading something like  
234 this, with large letters: "Danger, high voltage.  
Keep out." I don't remember seeing it. I  
didn't go anywhere near the switch-board. On these  
tallest upright posts on the structure, farthest away  
from the substation, I did not see a large danger sign  
there, "Danger, high voltage. Keep out," or some-  
thing of that substance. I didn't look for any  
around there. In order to get into this enclosure,  
I had to take [158] the staples out to loosen the



(Testimony of P. R. Sheaff.)

wires, so I could get inside the fence. I don't think there was any gate there leading into that enclosure, enclosed by that wire fence. I don't think  
235 there was any way to get into it unless you got in through between the wires. At any rate, that is the means I took of getting into that enclosure where the lightning-arrester was. I knew that was a lightning-arrester. I heard them talking about building a lightning-arrester. I didn't hear them talking about what a lightning-arrester was. I heard them speaking of a lightning-arrester. I don't remember of hearing them say all about a lightning-arrester, and I don't remember hearing the boys around there saying anything about what a lightning-arrester was for. I will say I do  
236 not remember them saying anything about it.

I am quite certain that I entered into that enclosure on the south side of the substation. It is not a fact that I entered in the north side and left the wires down when I went in. I didn't put the wires up after I went in. When I went in there to work I left the wires down. I feel quite positive in my recollection that I went in on the south side. I know I did. When I arrived at the Fairview  
237 station that morning the first thing I did, I got a pick and shovel. I got a pick and shovel after going up to the mill, or up to the mine. I remained around the premises in the mill, I suppose fifteen or twenty minutes, something like that; maybe ten minutes, it may have been half an hour; say between ten minutes and a half an hour. I left

(Testimony of P. R. Sheaff.)

Wonder that morning about half-past four and had about sixteen or seventeen miles to go to Fairview substation. I drove over with two horses and a wagon. It was a stage. I was a passenger

238 on the stage. The stage stopped in Fairview, and I walked up the hill from New Fairview

to the substation. There are [159] no houses or habitations close to this substation. It was sort of mountainous country there. The nearest place where people lived was in the office building at the Mining Company's property, that would be about three hundred feet away. I think there was some children down in the canyon about two hundred or three hundred yards down below there. I

239 think there was a cabin or two over on another hill, southwest about three hundred yards. I

first went to the Mill and saw Mr. Fleming. I got to the mill somewhere about half-past eight or a quarter to nine. After remaining at the mill from ten minutes to half an hour, I went to the substation.

I think I saw Mr. Perrin up around the mill somewhere. He was the electrician for the Nevada Hills Mining Company. After I left Mr. Perrin, I came direct to the substation itself. I also spoke to Mr. Herring, who was employed by the Nevada Hills. I

think he was working on a telephone line out  
240 back of the shaft-house, or the machine-shop.

I saw lots of fellows besides Mr. Herring, they were working up there, but I don't know whether I spoke to any more or not. There was a lot of men working around there. They were mixing concrete,



(Testimony of P. R. Sheaff.)

I think. I have seen those concrete mixers. I don't remember if they were mixing the concrete in that way in the Nevada Hills property that morning. I saw the blacksmith before I went down to the substation. Mr. Fleming ordered the clamps.

I requested him to order the clamps. It was  
241 the blacksmith of the Nevada Hills who was  
to make the clamps, and I had a drawing there  
that Mr. Halpenny had furnished me with. I gave  
it to Mr. Fleming, and I presume he gave it to the  
blacksmith. After that I went to the Fairview sub-  
station for the first time that morning. I got there  
around about nine o'clock. The first thing I did  
when I got there, I got this pick and [160] shovel.  
I got the key from Mr. Perrin, I think, for the pur-  
pose of entering the substation, and I used  
242 that key to enter the substation, and I went  
into the substation to get the pick and shovel.

I got the pick and shovel out of the substation. The  
size of that substation building is about twenty by  
fifteen feet, or something like that. With this gable  
end facing me now, the broad side, as it appears to  
me, would be the twenty foot (referring to model),  
and the sides upon which the roof would slope would  
be the fifteen. It was really, in one sense, wider  
than it was long. There were three transformers  
there at that time, I believe. The trans-  
243 formers were on this side of the building and  
the pick and shovel were over on the other  
side of the building, so that would be the width of  
the building, probably, from the transformers. As

(Testimony of P. R. Sheaff.)

you come in this way, the switch-board was on that side, on the left-hand side; as you went in the switch-board was on the left-hand side. The switch-board, I think, was right on the ground. I can't remember how the wires that went into the gable end of the substation were carried in there. I can't remember seeing just where the wires were in there.

244 I knew there were wires there. I did not remain in the substation that morning over half a minute, I guess. I got my pick and shovel and came around to the south side of the substation and then detached the wires of the fence. I don't remember what implement I used in pulling out the staples. I think it was a pair of pliers though. I had them with me. They belonged to me. I used those pliers for the purpose of stringing wires when

I was building those lines, in tying the wires,  
245 cutting, and all that sort of business. I didn't have wire cutters with me, as well, just the

pliers. The pliers were so arranged that you could cut wire with them, or break off wire with them, and I used them for that purpose. In my work as a

[161] lineman I used a monkey-wrench and several tools. I would have to bore holes for the insulators. We would not use augers for they were already bored. They came prepared. We would attach those insulators, or attach the cross bars to the poles. I attached those. The holes were al-

246 ready bored, and I finished the work of attaching the insulators and then did the work of attaching the wires to the insulators. I used what-



(Testimony of P. R. Sheaff.)

ever tools were necessary to accomplish those various purposes. They were at hand, so that I could use whatever was necessary. When I went into the enclosure after taking out the staples, so far as I can remember, I went to where that first block is represented there (refers to defendant's model). Where this first block is represented and which on the other model is marked "A" I took a direct course to that place. That was the point to which I had  
247 been directed to go by Mr. Halpenny the night before, and that point was the side of the lightning-arrester, farthest from the substation building. When I got to that point, the first thing I did so far as I can remember, I started in to dig a hole there. I got the location of the hole first. I had a plumb line. I had a piece of twine, I forget where I got it from. I tied a rock or something to the twine for the purpose of making a plumb line  
248 to get the true perpendicular. I aimed to place the hole exactly below the end of the pipe that came over that insulator. In locating the hole I did observe that pipe and its position. I think I fastened the string to the pipe about that far from the end of it (showing); about an inch or two. I don't know as anybody told me to do it that way. No, I don't remember Mr. Halpenny telling me to use a plumb line. I don't remember where I got the knowledge of the use of a plumb line; I knew how to use a plumb line then; [162] I knew for  
249 what purpose a plumb line was used. I don't remember Mr. Halpenny telling me to use a

(Testimony of P. R. Sheaff.)

plumb line. I don't think he did tell me then to attach anything to that pipe. He told me to dig the holes under the arms. He said the side nearest the switch. I understood him by the arm to mean the ends of those pipes sticking up there. I think he did use the word "arm." I don't think he did

use the word "horn." In telling me to dig the  
250 holes I don't remember just what the exact words used were, whether he said under the horn or under the arm or under the pipe. He said to dig them on the side nearest the switch. I could not be positive that he did not say the dead side. He told me to dig the holes underneath the arms. I don't know how I happened to dig it underneath the point of the arm. Possibly he had told me to dig it under the point. As near as I can tell you he

told me to dig those holes under the arms  
251 nearest the switch. I don't remember of his telling me to dig them under the point. I

happened to dig them under the point because I presume that is where he wanted them. I don't know how I happened to presume that is where he wanted them. I guess it was because I knew of my own knowledge and experience where they ought to be dug. I had done that same work on the Wonder lightning-arrester and I had dug those holes on the Wonder lightning-arrester, and had assisted in plac-

ing the concrete blocks at the Wonder ar-  
252 rester. I guess that was how I came to know how to do that work. I had done that work at the Wonder substation under the direction and



(Testimony of P. R. Sheaff.)

under the instructions of Mr. Halpenny, with Mr. Halpenny right there telling me how to do it. When I had finished that work at the Wonder substation, I knew how to do that thing, and when I was instructed by Mr. Halpenny to go over there and do that work, I knew how to do the work I was [163] assigned to do. I knew where to place the holes.

At the Wonder substation, when I was doing  
253 that work, clamps were put on the blocks and  
wires were attached to the end of what you call  
the arm down to those clamps. Clamps were put on  
the top of the concrete blocks. I think they were  
also put at the bottom. I think they were put on  
both ends. All that wiring was done from the ends  
of those arms to the clamps at the Wonder lightning-  
arrester before I was sent over to do that work at  
the Fairview lightning-arrester. I didn't hear any  
of them talking about why those wires were  
254 attached from that arm to those concrete  
blocks at the Wonder station. I did not know  
why it was done. I did not know it was to get a  
ground from those wires. At any rate, knew how  
to perform the task that Mr. Halpenny sent me over  
to perform on that day. Before I started each one,  
I located the position of the hole. When I dug the  
first hole I stood between the first and second. I  
suppose there was enough room in there for me to  
work, and in going to the position where I stood in  
doing my work. I went in between the light-  
255 ning-arrester and the posts of the structure  
back of the lightning-arrester, toward the

(Testimony of P. R. Sheaff.)

switch. There was enough room to move around in there. I am pretty sure I threw the dirt that I dug out of that hole down the hill. I didn't pick out any particular spot to do it, that I remember. I think I just dug it out and threw it down the hill. Here is the situation; the ground was sloping and I just shovelled it out and threw it down. As the ground was sloping it might have made a  
256 little pile. I don't know as it was so small corresponding with the amount of earth I had removed. Oh, I suppose, I could have stepped over it. I could step over a pretty good size pile of dirt at that time. In digging that second hole, I think I stood in about the same relative position [164] as I did in the first. I can't remember exactly where I stood. I remember exactly where I threw the earth from the hole, kind of down this way (showing). The slope still continued there. I  
257 think I threw it down the slope. I remember where I stood in digging the third hole. I stood at this side (indicating)—on the north side, over here. I am quite certain where I threw the earth from that, I threw it out to the right. In putting the concrete blocks into those holes, I could put the earth back in again without coming in very close contact with any of these wires or pipes there. I tied my plumb line around all three of these arms. Before I fastened my plumb line around that wire, or before I touched the wire, I must have seen the



(Testimony of P. R. Sheaff.)

wire. I looked at the pipe. I looked at it to  
258 see where to tie the string on it. I didn't  
look at the whole length of the pipe. I looked  
at the end of it that was sticking out to see where  
to tie the string on. I don't know whether I took  
hold of the pipe. I tied the string around it. In  
doing so I guess my fingers came in contact with the  
pipe. Before putting any fingers in contact with that  
pipe, I did not look to see if it was attached  
259 to a high-power wire.

Mr. CANNON.—Q. Isn't it a fact that you  
didn't look because you knew they were disconnected,  
having assisted in building that line?

A. I don't know whether that was the reason I  
didn't look.

WITNESS.—(Continuing.) I must have known  
they were disconnected. I knew there was an in-  
sulator right in front of me when I looked at them.  
I would not have touched them if I didn't think they  
were safe. I felt quite sure from what I observed  
around there that those wires were safe and conse-  
quently I would have touched them without hesita-  
tion. After [165] fastening and attaching  
260 my plumb line to one of them I went about my  
business without any discomfort, in any way,  
shape or form. I felt no shock from any of these  
pipes nearest the switch. I didn't do any work  
around there except to dig the holes. After I had  
dug the three holes I threw my shovel down—laid it  
down, just tossed it, with the intention of going out  
of the enclosure. It was my intention to go out and

(Testimony of P. R. Sheaff.)

then come back again. In going out it was my  
261 intention to go around to the opposite side of  
the lightning-arrester to the one where I had  
been working. I had gone in one way and I was  
going to go out another.

Mr. CANNON.—Q. Now, of course, from your experience that morning, and from your knowledge, as you have testified to it, you knew that the three pipes nearest the switch were dead, and that they were safe, didn't you? A. I must have known it.

Q. And you knew after you dropped your shovel, after finishing the third hole, that you could go out the way you went in, with perfect safety to  
262 yourself, didn't you? A. Why, I did, yes.

Q. You elected therefore, not to go by a way you knew was safe, didn't you?

A. Well, the way you put that makes it kind of hard to answer.

Q. But at any rate, your intention was to go the other way? A. Yes.

Q. And you did start to go a way other than the one you knew was safe, didn't you?

A. Yes, but I thought it was safe too.

Q. Now, before going the other way than the one you knew was [166] safe, did you make any  
263 sort of investigation to see whether it was safe or not? A. No.

WITNESS.—(Continuing.) Before starting around, before starting toward the building with the intention of going between the lightning-arrester and the building, I didn't make any sort of an investiga-



(Testimony of P. R. Sheaff.)

tion at all, as to the arms opposite the one under which I was working. I didn't look up to see whether they were fastened to the high-tension wires over my head. I don't know whether I heard the purring of the transformers in the building that very

morning. My intention was to go around in  
264 that space between the lightning-arrester and the building without turning my eyes aloft to

see whether those pipes were connected with the high-tension wires above. I didn't make any investigation at that time, and before starting for that place, as to whether the transformers were working. I don't remember of listening whether the transformers were working. I was within a few feet of the rear end of the building. The transformers were about three feet from the wall of that building. I was about eight or ten feet from the transformers themselves, when I got the pick and shovel. When I

started to go toward the building, I was just  
265 about the same distance from the transformers as when I got the pick and shovel—somewhere

about the same distance. The wall of this substation was galvanized iron. I don't know whether you can hear things very readily through galvanized iron. I hadn't noticed when I was in the substation at Fairview or the substation at Wonder, that I could from the inside speak to the boys on the outside; or the boys on the outside could speak to me on the inside

without any difficulty. I could not say ex-  
266 actly how far the points of the arms nearest the substation were from [167] the wall of

(Testimony of P. R. Sheaff.)

the substation itself at Fairview; they were about three or four feet. The distance between the points of the dead arms and the apparatus next to it, near the switch, I think was about the same as it was on the other side. There was a difference in the height of the dead and the other arms. There must have been a difference of a foot or so, eight or ten inches anyhow. The arms were the same, that is, the arms

267 were the same elevation, but the ground fell away. On the side nearest the switch the ground was lower than on the side nearest the substation. Taking the arms nearest the substation, I would say the insulated pipes on the arrester would be between five and a half and six feet above the ground. On my body they would come anywhere between five and a half and six feet from the soles of my feet. I am six feet six with my shoes on. When I was standing near, the points of these arms nearest  
268 the substation would reach somewhere along in here on my body (indicating) about to my chest. The lower part or point of that arm would reach between about here (indicating on body) and here, I would judge—somewhere along in here, with me standing upright. I have placed my fingers along about six inches apart with the upper finger about opposite the middle of my shoulder, and I think that point would reach me somewhere in that six-inch space, approximately, that I have pointed out. On that morning I weighed about two hundred and five pounds and I had just about the breadth of shoulder



(Testimony of P. R. Sheaff.)

as you see me. In passing through that space  
269 between the part of the lightning-arrester  
nearest the building and the building itself, if  
I walked upright past those points, I would not fill  
that space. I could not say that the space between  
those points and the building was more than three  
feet. Before deciding to go along in that space be-  
tween those points and the building, I don't remem-  
ber listening [168] to see whether the purring  
sound was going on inside the substation. I did not  
take any measures at that time to determine whether  
or not the transformers were working, or  
270 whether the power was on. When I went into  
the substation that morning to get the pick and  
shovel there was nothing to prevent me from deter-  
mining whether the transformers were working or  
not. I could have determined that fact absolutely  
for myself by listening for the purring sound. Be-  
fore entering this enclosure at all, I could have de-  
termined to my own satisfaction whether the power  
was passing into the substation. I don't remember  
taking any means to ascertain that fact before enter-  
ing that enclosure surrounding the lightning-arrester.

Mr. CANNON.—Q. Your attention was called this  
morning to your testimony with relation to  
271 hearing that purring sound the morning of the  
accident, and some question was made about it,  
before adjournment; I call your attention to your  
testimony as follows: (Reads:) “Mr. Cannon. (Q.)  
You have been in substations while the transformers  
were working, haven't you? A. Yes. Q. You know

(Testimony of P. R. Sheaff.)

they make a noise, make a purring kind of noise, don't they? A. Yes, there is some kind of a noise, a

kind of hum. Q. That noise is sufficiently loud to be heard a considerable distance, isn't it? A. To the

best of my recollection, you would not be able  
272 to hear it very far away, not outside of the

building. Q. Well, you can very readily hear it inside the building, can't you? A. I think so. Q.

Inside the transformer station it is a sound that can be readily detected by anybody who has heard it before, can't it? A. Yes. Q. Is not that sound such

that it can easily be heard outside the building, and for quite a distance from the building? A. No. Q.

Describe that sound, as well as you can. A. Well, it is a [169] kind of a purr. Q. A kind of a pur-

ring sound? A. Yes. Q. And is of such a  
273 peculiar nature that it is easy enough to detect

it, and recognize it after you have once heard it, is it? A. I don't know whether I would be able

to recognize it or not. Q. Where, prior to your accident, had you heard that purring sound in sub-

stations? A. I had heard it in Fairview that morning. Q. In Fairview what? A. That morning. Q.

That morning? A. Yes. Q. You heard that purring sound then, in the substation at Fairview the

morning of your accident, did you? A. I  
274 think I did, yes. Q. When you went in there

to get the pick and shovel, you heard that purring sound, did you? A. I don't remember clearly,

but I suppose I did. Q. That is your best recollection, isn't it? A. I presume I heard it. Q. Did



(Testimony of P. R. Sheaff.)

you go down to the other substation, the substation of the Nevada Hills people, that morning? A. I don't think so." That is correct, isn't it? A. Yes.

WITNESS.—(Continuing.) Before starting for the point, where I threw away the shovel, toward the building, I don't remember listening to hear  
275 the purr of the transformers. I did not look at the arm or arms nearest the building. I did not follow those arms, those pipes or arms, up to their connection with the power line above. I don't remember doing anything of that kind. My intention was to go around to the other side of the building. I don't remember listening for anything for the purpose of finding out whether there was power there or not. I threw my shovel away and went toward that building, without thinking of the danger, or without thinking of any possibility of danger.

276 Mr. CANNON.—Q. It is a fact then, isn't it, that you wandered over to that point without any thought on that subject at all? [170]

A. Yes.

Q. Going back to your experience on poles and stringing of wires on poles, you had become quite expert at that business, hadn't you?

A. No, not an expert.

Q. Well, you were fairly handy about climbing those poles with the appliances you used, weren't you? A. Yes, climbing.

Q. What is it? A. I could climb a pole.

WITNESS.—(Continuing.) I could not climb

(Testimony of P. R. Sheaff.)

them readily and could not work up there with  
277 those contrivances on my feet about as well  
as any of the linemen. I don't know as I  
could show off and do some stunts up on those poles.  
I could not do any acrobatics or anything of that  
kind on the poles with the boys. (Witness is shown  
photograph.) I have seen a photograph like this  
one before. That photograph is a picture of myself  
taken in Wonder—the date I could not tell you. It  
was taken, though, I suppose, a few weeks, a week  
or two before the accident. It was while Mr.  
278 Halpenny and I were working together. I  
think Mr. Halpenny took the picture. I think  
I took one of him about that time. That picture is  
a fairly accurate representation of the scene it pur-  
ports to portray. This photograph looks like the  
last pole along the line. The cluster of poles and  
insulators there in the center would be the switch,  
which would be this outer construction on the model.  
That pole which I am on would be the pole from  
which the guy wire ran down close to the light-  
ning-arrester in Wonder. I helped to erect  
279 this pole over here (indicating on picture).  
I don't think I worked on the pole in the cen-  
ter. I didn't help with any of the wires on that left-  
hand [171] pole. I don't think I helped with the  
pole where my picture appears to be. I don't re-  
member working in this cluster of insulators and  
clusters of wires in the center. I would not say that  
I did not work in there, but I don't remember. I  
was in the power plant on Bishop Creek, California;



(Testimony of P. R. Sheaff.)

it belonged to the Nevada-California Power  
280 Company. I just stepped inside the door.

That must have been either in 1907 or 1908. I know now that their power plant is on Mill Creek. I didn't know then where it was, but I knew it was at some place some distance away, and that the power had to be transmitted over these three wires. I spoke the other day about having different sizes of wires on reels and that the wire had to be reeled off for the purpose of using the power wires and the telephone wires. There was a scheme rigged up by which the wire would be reeled off the differ-  
281 ent reels by sending the wagon ahead and by using horses for that purpose. I could not tell you who got up that idea. I did not. Before that they didn't pull the wires off the reels by hand. The power wire was of copper, the telephone galvanized iron. I had no difficulty in determining what kind of wire it was they were using, the material and size. I made these concrete blocks that were used at the Wonder station and which were going to be used at the Fairview station. Mr. Halpenny told me how to make them. I don't know whether the work around Wonder and Fair-  
282 view was practically done or not at the time of my accident. I suppose that the work was done in Wonder. Mr. Halpenny and I had already arranged between ourselves that the work was to be finished up and that we were going to leave there in a day or so. I did a little blasting between the main line and the substation at Fairview. I used dyna-

(Testimony of P. R. Sheaff.)

mite. I loaded two holes. I think I fixed the caps on them, the fuse in the caps, and prepared them.

You bet dynamite is a dangerous agency. I  
283 took [172] considerable care about fixing  
those things. I seen men doing it around  
Bishop Creek. I learned how to prepare dynamite  
and did blasting by observing men doing it. I had  
seen men doing it a great number of times. I had  
seen men doing blasting with dynamite oftener than  
I had seen men working around live electric wires.  
I had not seen men working about live electric wires  
for a long time. I think I was around when we were  
building the line from the main line to Fairview and  
while the connections were being made with  
284 the main line. I was around and about when  
the connections were being made with the Fair-  
view power-house and the Wonder power-house. I  
was there, and suppose I was paying attention to  
what was going on. I don't think I was paying as  
much attention to them as to the men who were blast-  
ing down in Bishop, or wherever it was. It always  
had a fascination for me to see them plugging a hole  
with dynamite and a heavily charged wire with elec-  
trictiy had no fascination for me. I don't know that  
it had a sort of repulsion for me. I don't re-  
285 member anything about having any feeling  
that I would like to keep away from it. I have  
said that since this accident happened, I have re-  
ceived my support through my friends. Some of the  
friends are Doctor Gardner, Mr. Justice, Mr. Adam  
Farrington, Mr. Will Farrington and Mr. Adams.



(Testimony of P. R. Sheaff.)

My brother was the only friend who assisted me within six or eight months after the accident. The Pacific Power Company helped me. I would not particularly call the Pacific Power Company a friend. I suppose I was in friendly correspondence with them

for months after the accident and receiving assistance from them. The company paid Dr.

286 Gardner some money, I could not say the exact amount. Mr. Justice was the nurse and the company paid him on account of his services as my nurse, \$400.00, I think that was the amount. The company did not pay me anything [173] or advance me some money in cash. I recall Mr. Chatfield turning me over some cash on the first occasion that he called on me. It was \$50.00. And the company also paid

my hotel bills for quite a long time, for several  
287 months at Fallon, and also paid part of my drug bill at Fallon. In all up to the time that

I commenced suit against the company, they had advanced to me or paid to me on my account I suppose about \$1000.00, or thereabouts, between the time I was injured in July, and the following April, I think, when the suit was brought. As the bills came in I sent some of the bills to the company. I was reporting to the company in my letters as time went on

how I was getting along. I can't remember  
288 whether the company through its agents had

been strongly advising me to go to some hospital in San Francisco at the company's expense, for the purpose of getting expert treatment. It seems to me that Mr. Poole suggested that I go to Los An-

(Testimony of P. R. Sheaff.)

geles. I think he did write me that I go to any hospital that I might suggest, or that might be recommended, for the purpose of getting expert surgical treatment. I don't know whether he urged me or not. He probably asked or suggested it to me. I was getting along pretty good where I was. That friendly relation continued up to a very short  
289 time before this suit was commenced. I wrote them to the effect that I had commenced suit and referred them for anything further they desired to my attorneys, Curler and Martinson. In addition to my physical suffering, I suffered mental anguish or mental worry on account of my condition and worrying about my future, and what I would do in future for a living and things of that kind. They bore down rather heavily on me, those feelings.

Mr. CANNON—Q. Isn't it a fact, Mr. Sheaff, that the company offered to take that worry entirely from your [174] mind?

A. They offered me a job, on conditions.

290 Q. Only a job, on conditions?

A. They offered to pay my expense for six months if I would sign a release.

Q. Isn't it a fact, Mr. Sheaff, that the company offered to pay or assume all of your various liabilities for medical service and supplies, nursing, and hotel bills, which had been occasioned as a result of the accident—agreed to pay your reasonable expenses for board and lodging, until you were able to support yourself; and agreed to provide you with suitable



(Testimony of P. R. Sheaff.)

permanent employment, as soon as you were  
291 able to perform the duties thereof, and all they  
asked you to do was to release them from liability of a lawsuit?

A. I forgot all those things you mention there.

Q. Well, you were sent, weren't you, by Mr. Chatfield a form of release? A. Yes, later, I was.

Q. Well, not later than the early part of February, 1912?

A. No, but then he had shown me one before that time.

Q. You had previously had a talk with Mr. Chatfield about that, hadn't you?

A. We had talked over that; he said he would send me over a release.

292 Q. He would send you over a paper?

A. Yes.

Q. But you didn't get the paper right away, did you, and wrote Mr. Chatfield, asking him why he did not send you the paper?

A. I don't remember whether I wrote him or not.

Q. I call your attention to a letter dated Fallon, Nevada, January 31st, 1912, addressed to the Pacific Power Company at Bodie, purporting to be signed by yourself, is that your [175] signature? (Hands letter to witness.) A. Yes.

Q. Did you write that letter?

A. Yes, I guess I did—yes.

293 Q. Let me call your attention for the purpose of refreshing your recollection, to this part of it (indicating on letter). A. Yes.

(Testimony of P. R. Sheaff.)

Q. Now, after looking at that letter, is your memory refreshed as to whether or not you wrote the Pacific Power Company for the form of document which you were to sign with relation to your injuries and future employment?

A. Yes, I suppose that is what that refers to.

Q. That is what that refers to, is it? Then, as a matter of fact, you had been waiting and expecting to get the papers that you and Mr. Chatfield were talking about, had you?

294 A. Well, I had been expecting them.

Q. And had been waiting for them, as you say in your letter? A. Yes.

Q. Now, you did receive a form of release, didn't you? A. Yes.

Q. I show you what purports to be a carbon copy of the document sent to you for your signature, and ask you if you will examine it, and say whether that is a copy of the document sent you (hands paper to witness).

A. Yes, I think that is a copy of the document that was sent me.

295 Mr. CANNON.—We offer this in evidence, and are willing to substitute the original, if Judge Curler can find it.

Mr. CURLER.—I have, I am sure, the original document that was sent to Mr. Sheaff; I don't care which one is put in evidence, but I would like to compare them before this is introduced.

Mr. CANNON.—Suppose you find it now, I would rather [176] get the original in myself.

Mr. CANNON.—If your Honor please, the docu-



(Testimony of P. R. Sheaff.)

ment I showed the witness just before recess is admitted by counsel for the plaintiff to be a true  
296 and correct copy of the document sent to Mr. Sheaff for his signature, and I offer it in evidence.

Mr. CURLER.—No objection.

The COURT.—It will be admitted.

(The document is marked Defendant's Exhibit "I," and read to the jury:)

**[Defendant's Exhibit "I"—Release.]**

“KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the Pacific Power Company, a California corporation, agreeing to pay and assuming the various liabilities for medical services and supplies, nursing and hotel bills which have been occasioned as a result of an accident which  
occurred to me at the Fairview substation of  
297 the aforesaid company; and further agreeing to pay my reasonable expenses for board and lodging until I am able to support myself, and furthermore agreeing to provide me with suitable permanent employment as soon as I am able to perform the duties thereof; I, P. R. Sheaff, of the County of Churchill, State of Nevada, have released and forever discharged, and by these presents do release and discharge the said Pacific Power Company, its successors and assigns, of and from all and all manner of actions, causes of actions, suits, debts, dues, sums of money, accounts, controversies, agreements, promises, damages and demands whatsoever  
298 in law or in equity which, as against the said Pacific Power Company, I ever had or now

(Testimony of P. R. Sheaff.)

have or which I or my executors or administrators hereafter can, shall or may have for or upon or by reason of any matter, cause of thing whatsoever from the beginning of the world to the date of these presents; [177] and more particularly of and from any claim that I may have arising out of a certain accident that happened to me while being in the employment of the said Pacific Power Company, at Fairview, Nevada, on or about the 18th day of July, 1911.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this —— day of February, 1912.

—————(Seal)

Signed, sealed and delivered in the presence of.”

Mr. CANNON.—Q. Did you sign that document, Mr. Sheaff? A. No, sir.

WITNESS.—(Continuing.) I don't remember just what was said in our conversation, and I can't say whether that document was drawn in accordance with our conversation or not. After receiving that document I don't remember making any demands or counter-demands upon the Pacific Power Company. I did not demand of them any specific sum of money.

I did not threaten them with any suit. I don't remember if I advised them that I would bring suit against them unless they would do certain things for me. My relations clear up to that, and after this time, were always friendly. Friendly letters ending with “Best wishes,” and “I remain yours sincerely,” and “Give my regards to” so-and-



(Testimony of P. R. Sheaff.)

so and so-and-so, couched in ordinary phraseology like that passed back and forth between us.

Mr. CANNON.—Q. I show you a letter, Mr. Sheaff, dated Fallon, Nevada, January 1st, 1911, addressed to the Pacific Power Company, 301 Bodie, Cal., and purporting to be signed by you; is this in your handwriting? (Hands letter to witness.) A. Yes.

Q. And signed by you. I show you a similar letter, dated December 1st, 1911, purporting to be signed by you, addressed to the Pacific Power Company; was that letter written by you? (Hands letter to witness.) [178] A. Yes.

Q. This date, January 1st, 1911, must be 1912, must it not? It is printed 1911; it was following your accident, wasn't it?

302 A. I presume that was supposed to be 1912.

Mr. CANNON.—We offer both of these letters in evidence.

(The letters are admitted in evidence, marked Defendant's Exhibits "K" and "L," and read to the jury.)

**[Defendant's Exhibit "K"—Letter, December 1, 1911, Sheaff to Pacific Power Co.]**

“Fallon, Nevada, Dec'r 1st, 1911.

Pacific Power Co., Bodie, Cal.

Dear Mr. Chatfield:—

Am enclosing my hotel bill for Nov'r, and will see that the Drug Co. sends in their bill for Oct. and Nov.

I am able to get around the house on my crutches now, and am doing nicely.

(Testimony of P. R. Sheaff.)

Mr. Justice was disappointed at not getting  
303 his money. I am not able to pay him, so I do  
hope you will send him his check.

Yours sincerely,

PERCY R. SHEAFF."

[Defendant's Exhibit "L"—Letter, January 1, 1911,  
(1912), Sheaff to Pacific Power Co.]

"Fallon, Nevada, Jan. 1st, 1911.

(1912).

Pacific Power Co.,

Bodie, Calif.,

Dear Mr. Chatfield:

Enclosed please find the Hotel account for Decr.  
I am glad to say I'm getting along fine, and was up  
town on crutches on Wednesday for the first time.

Have been up town several times since, and its fine  
to get out in the open and exercise. I bought a big  
pair of rubbers, so I'm fixed for footwear. [179]

I had a good Christmas, under the circum-  
304 stances, and hope you all did, and hope you  
have a prosperous New Year.

Yours sincerely,

PERCY R. SHEAFF."

WITNESS.—(Continuing.) I think the corre-  
spondence between me and Mr. Chatfield and the  
Pacific Power Company was practically all of the  
same tenor as the letters read. After I received the  
release I wrote to the Pacific Power Company.  
That is the letter I wrote. (Witness refers to letter  
handed him by Mr. Cannon.) Between the time I



(Testimony of P. R. Sheaff.)

received that release and the time I wrote that letter,  
I referred the release to my counsel.

305 Mr. CANNON.—We offer this letter in evidence.

(Letter admitted in evidence, marked Defendant's Exhibit "M," and read to the jury.)

**[Defendant's Exhibit "M"—Letter, February 13, 1912, Sheaff to Pacific Power Co.]**

"Fallon, Nevada, Feby. 13, 1912.

Pacific Power Co.,

Bodie, Cal.

Dear Mr. Chatfield:

Yours of Feb. 10th to hand yesterday, and in reply will state that after considering the release which you sent to me, I have concluded not to sign it.

Yours truly,

PERCY R. SHEAFF."

Mr. CANNON.—Q. Did you ever give the company any other reason than the one contained in that letter as to why you did not sign that release?

A. I don't remember of giving them any  
306 other reason.

Q. Is it not a fact, Mr. Sheaff, that during the time you were in correspondence with the Pacific Power Company, and accepting money from them, and having your bills paid by them to the extent of a thousand dollars or so, that you already [180] had a lawyer employed, ready to commence suit against them in case they offered you a release to sign?

A. Not necessarily in that specific event.

(Testimony of P. R. Sheaff.)

Q. Is it not a fact that you had a lawyer employed to commence suit against the Pacific Power  
307 Company, before you received that check dated July 31st, 1911,—the last check for your services?     A. No.

Q. When you received that check you turned it over to Mr. Curler, did you not, for his advice?

A. Not immediately I don't think.

Q. You turned it over to him before you cashed it, didn't you?     A. Yes.

Q. There are two checks dated July 31st, one for \$23.00, the other for \$57.15; both are stamped  
308 "Paid, Oct. 4, 1911"; it was before October 4th, 1911, that you employed Mr. Curler to represent you, wasn't it?     A. It was.

Q. How long before?

A. I don't remember just how long.

Q. At any rate, when you did employ Mr. Curler, you employed him for the purpose of representing you in proceedings you expected to bring against the Pacific Power Company, didn't you?     A. Yes.

Q. And having that intention in mind, and having a lawyer employed for that purpose, you continued to receive money from the company, and continued to correspond in a friendly way with the company, clear up to the time you commenced your suit,  
309 did you?

A. I corresponded with them. [181]

Q. Well, in the way indicated by the letters?

A. Yes.

Q. And you continued to receive money from them,



(Testimony of P. R. Sheaff.)

and to correspond with them while you had a lawyer engaged to commence suit against them? A. No.

Q. You did not?

A. No, I did not receive money from them.

Q. And you requested them to pay bills after you had employed Mr. Curler to represent you in the suit that you were to commence, didn't you?

A. Yes.

Q. And you continued to accept money from  
310 them after that, didn't you? A. No.

Q. Didn't you? You received money from them after the 4th of October, didn't you?

A. No.

Q. No? A. No.

Q. Then you did receive money from the Pacific Power Company in 1912, didn't you?

A. No, I received a check for Mr. Osborne.

Q. He was the hotel-keeper, and that was for your board at the hotel, wasn't it? A. Yes.

Q. Now, you received checks also in November, didn't you?

A. I don't just remember, I probably did.

Q. At the date of that letter, November 6th,  
311 1911—when you received that letter you received enclosed with it, certain checks, didn't you? [182] A. Yes.

Q. And those checks were for some of your expenses, too, were they not? A. Yes.

Q. So that it is a fact after you employed Judge Curler to represent you and to commence proceedings against the Pacific Power Company, you con-

(Testimony of P. R. Sheaff.)

tinued to receive money from the Pacific Power Company?     A. They continued to pay my bills.

Q. Well, you continued to receive checks and to use checks in the payment of your bills.

A. The checks were not made payable to me.

312     Q. Well, you continued to use them in the payment of your bills, didn't you?     A. Yes.

Redirect Examination by Mr. GEDNEY.

Some of the officials came to see me while I was at Fallon after the accident. Mr. Chatfield came there twice; the first time was about the 20th of September, 1911. I had a conversation with Mr. Chatfield at that time. We talked there for several hours and we spoke of different things, and among others the payment of my expenses. He

313     would not promise to pay them. My expenses had not been paid up to that time. I didn't

have any agreement with them as to my expenses. I think Dr. Gardner had an agreement with the company. I don't know of my own knowledge what that agreement was. I saw a telegram from the power company a few weeks after my accident. Doctor Gardner showed it to me while I was in bed. Mr. Justice was attending me as nurse. I do not know whether there was a contract between the Pacific Power Company and Mr. Justice as to his being paid by the Pacific Power Company. The

314     hotel-keeper told me that the Pacific Power Company had agreed to pay my bills at the hotel. [183] Mr. Chatfield had conversation with me about those matters both times he was over to see



(Testimony of P. R. Sheaff.)

me. At that time he discussed my hotel bills and doctor bill and nurse bill. The second time he was over he said he would pay the bills. I don't remember the conversation that was had in regard to those bills. The substance of the conversation was that he would pay the bills. I can't remember  
315 that he said anything more. As I received these bills from the hotel-man and the nurse, I sent them to the power company for them to pay them. There had been an agreement or understanding between myself and the Pacific Power Company concerning the sending of the bills to them. That was an unwritten understanding, your Honor, with Mr. Chatfield and me. I can't remember the conversation, that is, not the words of it. He told me to send the bills over to him, and that was the impression I got from the talk with him. I can't recollect any more of the conversation or the  
316 substance of it. He told me that the second time he was over there; that was about the 10th of October, 1911. I did thereafter send the bills to him. The Pacific Power Company paid those bills up to a certain time. They paid part of the drug bill and they paid my board and hotel bill and they paid the nurse some money on account and the doctor some money on account, and I think they were the only bills that were sent them. I sent the balance of the nurse's bill, but I don't remember whether I sent the balance of the doctor's bill  
317 or not. When I sent in the balance of the nurse's bill it was just about the time he quit

(Testimony of P. R. Sheaff.)

me. Mr. Chatfield was there and talked with me about the release. To the best of my recollection, he said that he would send me over a form of release, and I said "All right, send it over, and I will give it consideration." I don't think Mr. Chatfield and I talked over the terms of the release, not [184]

fully. He told me he would put a clause in  
318 it, so that they would pay all of the bills and  
give me a job, if I would sign it, and all of those  
words that are there, I don't think we talked about  
it in detail. I don't know who drew this release; I  
had nothing to do with drawing it. There was no  
agreement at any time, or any understanding as to  
what the job for life would be if I signed this release.  
There was no understanding or agreement what the  
wages or salary would be for this life job, if I signed  
this release. The company never offered to  
319 sign this release. There was no understand-  
ing that if I signed this release the company  
should sign it. There was no offer by the company  
to pay me a stated or certain amount for my injuries.  
After I refused to sign this release, the company  
did not make any other offer. I don't remember if  
they offered to amend this release or change it in  
any form. After that time they paid none of my  
bills. After that time they sent no checks to me for  
any of my expenses. I had employed Judge Curler  
as my attorney under a definite agreement to bring  
suit. There was an oral understanding be-  
320 tween myself and Judge Curler in regard to  
this matter when I employed him. That was



(Testimony of P. R. Sheaff.)

a few weeks after the accident. I asked Judge Curler to look out for my interests, told him I was injured, and I told him to take whatever proceedings he thought was necessary, and I would act under his advice. I don't know whether the company knew that I had employed Judge Curler.

Mr. GEDNEY.—I would state that the file-mark upon the complaint shows that it was filed the 10th day of April, 1912.

321       WITNESS.—(Continuing.) The balance of the nurse's and doctor's bills have not been paid by the Pacific Power Company. Proceedings have been had to collect it. (Counsel hands witness a letter.) I saw this letter before in Fallon. The signature [185] on there is that of W. N. Chatfield. Prior to this time, I received that letter from Mr. Chatfield.

Mr. GEDNEY.—We offer this letter in evidence.

(Letter admitted in evidence, marked Plaintiff's Exhibit No. 1, and read to the jury.)

**[Plaintiff's Exhibit No. 1,—Letter, April 1, 1912,  
Chatfield to Sheaff.]**

**“HYDRO-ELECTRIC COMPANY.**

**Bodie, California, April 1st, 1912.**

Mr. P. R. Sheaff,  
Fallon, Nev.

Dear Mr. Sheaff:—

322       I have been hoping to hear from you for some time, but have been disappointed. How are you getting along. By this time, I presume that you can get around quite well.

(Testimony of P. R. Sheaff.)

I hope that you reconsidered in regard to the signing of the release, for until this is done, I cannot settle your bills, as I told you last January. I really do not understand why you should hesitate to sign, for I made it up on the lines we were talking over, and I thought everything was satisfactory to  
323 you. Mr. Green has sent your board bills and I hardly know what to do about them until I hear from you, and he is evidently anxious for money.

We have certainly had a marvelous winter here this year. Hardly any snow at all here in Bodie and very little up in the mountains. As you probably know, we have not been able to supply Fairview and Wonder with power for the mills since the middle of January. We expect that there will be a run-off in a few days now, and expect to let them  
324 put on their loads about the 15th. Dan Watson, who you knew in Bishop, I believe, said some time ago that he had a job for you running a derrick engine, [186] whenever you wanted it. Forgot to mention that he has a contract on our new dam at Lundy, and is working on it now.

Hoping to hear from you in a few days, I am,

Yours truly,

W. N. CHATFIELD."

WITNESS.—(Continuing.) The motor at Millers stood about that high (indicating); one of them did.

One was about two feet and a half, and the  
325 other about three feet high. At no time did I ever have anything to do with these motors



(Testimony of P. R. Sheaff.)

other than turning the switch. No one at Millers at any time instructed me or warned me to keep away from the wires. There were some exposed wires outside at Millers that you could see. There were none in where I was working. There were no exposed wires about the switch-board at Millers that I know of. The timbers that were used in this Fairview lightning-arrester before I bored the holes in them, were out on this north side of where the  
326 arrester is now. None of it was put in shape at that time. After I finished boring the holes, I was not around that lightning-arrester at all up to the day of the injury. I had something to do with the upright poles which formed the switch, and the switch itself that stands just outside of the lightning-arrester. When they put it up, they put the switch on the poles on the ground, and I helped to bolt it on, and helped to raise it. I did not have any-  
327 thing to do with stringing the wires to or over the switch. That was done before the lightning-arrester was put up there. That day I went over from Wonder to Fairview, and after going up to the mine and ordering the clamps, I went down to the substation and went in and got a pick and shovel, and then went directly from there around to where I went to work at the lightning-arrester. It was an ordinary pick and shovel. I don't remember during the time [187] that I was there working with the pick and shovel striking any part of the lightning-arrester. No one had said anything to me

(Testimony of P. R. Sheaff.)

about not striking it. I was working right  
328 underneath the lightning-arrester, that is,  
underneath the arm over the last hole. I  
suppose I was standing about four feet from what  
at that time was the live side of that lightning-ar-  
rester. I think the shovel handle was about five  
feet long; the pick-handle about three feet. The  
handles were made of wood. At that time, I didn't  
know whether or not if I came in contact with the  
arms of that lightning-arrester nearest the building  
that I would receive a shock of electricity.

329 Assuming that the horns or pipes nearest the  
building were connected at the top end with  
the high-power wires, I didn't at that time know  
whether or not I would receive a shock if I came in  
contact with the lower end of those pipes. I know  
it now. I didn't know it at that time because of my  
ignorance of the matter, and then I thought these  
blocks were not connected on this side—these cement  
blocks on this side; and not only that, it was a clear  
day and there were no storms. I must have received  
information in regard to that lightning being on  
there at the time of storms. My understand-  
330 ing was that they would be charged when there  
was an electric storm. My understanding was  
that there was no charge in any of the arms when  
there was not any storm. In considering whether  
they were charged or not, I didn't make any differ-  
ence as between the back arms and the front arms. I  
didn't know at that time that if a person came in  
contact with the lower part of the arm that was con-



(Testimony of P. R. Sheaff.)

nected to the high tension wire that that person would receive a shock. I know it now.

331 Mr. GEDNEY.—Q. Now, what have you learned since that time which informed you of that fact? [188]

Mr. CANNON.—Object to that as immaterial, and is hearsay.

The COURT.—I will allow that question.

A. Well, I have been told by electricians that I could get—that anybody would get a shock there.

Mr. CANNON.—Move to strike out the answer as hearsay, and incompetent, irrelevant and immaterial.

The COURT.—I think I will allow that to stand. That is not a fact in the case; it is merely going to show his knowledge, and when he has acquired knowledge with reference to the action of electricity.

332 Mr. CANNON.—Your Honor will allow us an exception to both rulings, the ruling on the question, and on the motion to strike out the answer.

The COURT.—You may have the exception.

To the action of the Court in thus ruling on the question and on the motion to strike out the answer are here assigned as

### **Error No. 1.**

WITNESS.—(Continuing.) At that time I did not have any knowledge as to electricity going through a man or a person from a wire to the ground.

Mr. GEDNEY.—Q. Now, you were shown  
333 several checks by the counsel for the defense, and they were identified and admitted in evidence, and some of those checks showed a four dollar

(Testimony of P. R. Sheaff.)

a day payment and some checks, four and a half a day; will you explain what time you received the pay upon the four and a half basis?

A. As near as I can tell, it was when I did work in the line, climbing the poles and stringing the wires.

WITNESS.—(Continuing.) I did not have any agreement with the company that I should receive

four and a half a day for part [189] of the  
334 time and four dollars for the other time. At

the time I was working there I did not know what linemen's wages were. Ordinary laborers'

wages were four dollars a day. The company did not pay me any wages from July 18th to July 31st.

That "to and including July 31st, 1911," is not Mr. Halpenny's handwriting. I did not put that on that

check, and this other check marked "Exhibit 'G'" has the same statement; I did not receive pay upon

that check up to July 31st. I cashed that check upon  
the advice of Judge Curler. Mr. Halpenny

335 never instructed me in regard to the danger of electricity. Mr. Halpenny was a very

quiet man. In regard to his business, I had quite a few conversations with him—none in regard to elec-

tricity. We talked about ships and mountains and lots of other subjects. He at no time gave me any

instructions upon electricity. There is no difference in the wire between a high tension and a low tension

wire. It would be a difference in the amount of power on the wire. I guess I knew that the

336 wires that ran into the substation at Fairview were high tension wires. I don't know how I



(Testimony of P. R. Sheaff.)

knew it. I had never made any test. There was nothing about the appearance to indicate to me whether they were high or low tension wires. I never saw anyone make any test on those wires. There was no danger sign at Wonder upon the lightning-arrester. The lightning-arrester at Fairview had a different appearance altogether from the Wonder lightning-arrester; it was built on four big, tall posts. It was not set up against the building  
337 at Wonder the same as this one is at Fairview.

With regard to the building, it was set off to this side, I suppose between the corner of the building and the corner pole nearest the building. It was about ten feet or thereabouts. The arms of that arrester did not connect with the building at all that I know of. Another difference was that there were blocks in there—cement [190] blocks and the wires were connected from the arms to the blocks. Another difference—it was higher. Those arms that stick out horizontally, and the insulators that the arms rested on were higher. The arms on the  
338 Wonder arrester were about two feet higher than on the Fairview arrester. Those arms were within my reach standing upon the ground. The height of those arms from the ground on the Wonder arrester were about eight feet to the best of my knowledge, about two and a half feet higher than on the arrester at Fairview. I don't know if there was a danger sign on the switch at Fairview. If there had been a danger sign on the outside of the

(Testimony of P. R. Sheaff.)

post which forms a part of the switch, I would  
339 not have seen it. If it had been on either  
one of those posts I would not have seen it  
from this side. Presuming it was on the switch  
posts and that the sign was fastened, or readable, on  
the side away from the building, I could not have  
seen it. I didn't see any other signs on there. I  
came to have that picture that Mr. Cannon referred  
to where I was standing upon a pole in this way. I  
borrowed a kodak and took a few pictures up around  
the mill, and places, and I think that was the last  
day I was there; we had got about all the work  
340 done up; and then I went outside and Mr.  
Halpenny took the picture; I climbed up on  
the pole and he took the picture. I climbed up with  
Mr. Halpenny's climbing irons. I got them from  
him. I got this belt I have around my waist there  
from Mr. Halpenny. I did not have any of those  
articles, either a belt or climbers of my own. I never  
at any time owned a set. That is a fair picture as  
I appeared at that time.

Mr. GEDNEY.—Q. Mr. Sheaff, yesterday  
341 on cross-examination you were asked in going  
from the place where you dug the last hole,  
toward the building, if you wandered over to the  
point where you were hurt; now how did you go in  
going [191] from that hole to the building?

Mr. CANNON.—Object to that; it assumes that he  
went to the building.

Mr. GEDNEY.—I will change that, "toward the  
building."



(Testimony of P. R. Sheaff.)

A. I expected—started to walk towards the building.

Q. Did you wander?      A. Why, no.

WITNESS.—(Continuing.) All the time that I worked in Wonder I used Mr. Halpenny's climbers.

In Fairview, I sometimes used Mr. Johnson's  
342 and sometimes Mr. Halpenny's climbers. I

had never seen any men work on live wires when I knew those wires were alive. I never worked on a live wire. Mr. Chatfield gave me fifty dollars when he came over to visit me at Fallon, the first time I ever saw him—about the 20th or 25th of September, 1911. It was a check on the John S. Cook Bank, at

Goldfield, Nevada, signed W. N. Chatfield. It was a private check of Mr. Chatfield. Before that time

I had never seen Mr. Chatfield. I first had a  
343 conversation with Mr. Chatfield regarding a release the first time I ever saw him. I was

lying in bed and Mr. Chatfield was sitting alongside of the bed, and he showed me a paper written out in a memorandum-book and stated that Mr. Poole had asked him to see if he could get me to sign this paper, and I read the paper through, and it stated if I would—

Mr. CANNON.—Just a moment, you were asked to state the conversation; I don't think it is proper to state the contents of the paper in answer to that  
question.

344 Mr. GEDNEY.—Q. State the contents of that paper.

(Testimony of P. R. Sheaff.)

Mr. CANNON.—That is objected to on the ground it is immaterial.

The COURT.—Where is the paper. [192]

Mr. CURLER.—We haven't the paper.

The COURT.—Well, the paper is the best evidence; and you should show you haven't it before you introduce the contents.

Mr. GEDNEY.—The objection had not been made on that point; I can go into that; I was trying to get through quickly.

Q. Have you that paper?      A. No.

Q. Who had it at the time you saw it?

A. Mr. Chatfield.

345      Q. Have you ever seen it since that time?

A. No.

Q. Do you know where it is now?

A. I could not say, I don't know.

Mr. CURLER.—Mr. Cannon, have you that paper?

Mr. CANNON.—I don't know whether I have or not. I don't think I have any paper of the date of September.

Mr. GEDNEY.—Q. Describe what kind of a paper that was.

A. Oh, I should say it was about four inches wide, and five inches long; it was in a memorandum-book.

Q. State whether or not, it was one of the  
346      leaves of the memorandum-book, or was a separate paper.

A. It was a leaf of the memorandum-book.

Q. Now state the substance of that writing as near



(Testimony of P. R. Sheaff.)

as you can state it.

Mr. CANNON.—We object on the ground it is incompetent, irrelevant and immaterial, and no foundation laid for the question. I am simply making this objection to cut short this record, in view of the suggestion of the Court.

The COURT.—I will allow you to ask the question, but I don't see that it makes a great deal of difference.

To which ruling defendant then and there  
347 excepted [193] and said exception being  
allowed is here designated

### **Error No. 2.**

A. The paper stated that if I would sign it and release the Pacific Power Company from all obligations, that they would pay my expenses for six months from the date of my injury, and would also pay me half wages for six months.

WITNESS.—(Continuing.) I did not sign it. I told Mr. Chatfield that I would not sign it and he says "Neither would I, and I don't blame you." About that time he got ready to go away. It was  
nearly train time. That was after he gave me  
348 this fifty dollars. It was the same day. (Mr.  
Gedney hands witness four letters.) Those  
signatures are Mr. Chatfield's. I received these  
papers through the mail.

Mr. GEDNEY.—We offer them in evidence.

Mr. CANNON.—No objection to these letters going in, providing the following letter by Mr. Chatfield

(Testimony of P. R. Sheaff.)

goes in as a part of the offer; the letter of February 14th, from Mr. Chatfield also.

Mr. GEDNEY.—We have no objection, if they wish to introduce that letter.

Mr. CANNON.—All right.

Mr. GEDNEY.—We are offering these letters.

(The four letters are admitted in evidence,  
349 marked Plaintiff's Exhibit No. 2, and read to the jury.)

**[Plaintiff's Exhibit No. 2—4 Letters, Chatfield to Sheaff.]**

**“THE HOTEL GOLDEN.**

Reno, Nevada, 9 P. M.

Jan. 12—1912.

Dear Mr. Sheaff:

I am sorry to say that those papers I expected to find here for me, did not show up, and I think that by mistake they were sent to Bodie direct. I am leaving for there tonight and will send them to you at once when I get there. [194]

Am sure that you will be satisfied and know that you will make no mistake in signing, and as  
350 soon as you do, then I can go ahead and make those payments.

Yours very truly,

W. N. CHATFIELD.”



(Testimony of P. R. Sheaff.)

“HYDRO-ELECTRIC COMPANY.

Bodie, California.

Jan. 14th, 1912.

Mr. P. R. Sheaff,  
Fallon, Nev.

Dear Mr. Sheaff:

Arrived back here last night and found Mr. Osborn's bill here and am sending with this letter a check for him, which please deliver and have him send a receipt for same.

Did not find those papers here as I expected, and presume that they did not get to Reno until last night and as I told the people to forward them,  
351 I will probably get them tomorrow. Will send them on to you as soon as they get here.

The weather here is fine and warm, and what snow we had will soon be gone. We are up against it for water, and may have to close down our plant entirely if matters don't change mighty soon.

Yours truly,

W. N. CHATFIELD.”

“PACIFIC POWER COMPANY.

Bodie, California.

February 4th, 1912. [195]

P. R. Sheaff,  
Fallon, Nev.

Dear Mr. Sheaff:

As I wrote to you last night, I am sending you herewith the release, and I think that you will  
351 find it just as I said it would be. If there are any questions that you would like to ask, I will

(Testimony of P. R. Sheaff.)

do the best I can to answer them, but I think that everything is perfectly clear.

Now if you will sign this and return to me, I will endeavor to settle those bills just as soon as I possibly can.

Also will send you your traveling expenses to the one of those places that you mentioned that you would like to go, just as soon as you want to go.

Hope that you are still improving, and wish  
352 that it was so that I could drop in to see you.

Will be looking for a letter from you in a few days.

Am sending herewith a check for Mr. Osborne for January account.

Yours very truly,

W. N. CHATFIELD.

If you wish will send you a duplicate copy for you to keep."

"PACIFIC POWER COMPANY.

Bodie, California.

Feb. 10th, 1912.

Mr. P. R. Sheaff,  
Fallon, Nev.

Dear Mr. Sheaff:

On the 4th I sent you the release but have not heard from you since. Did you receive it all  
353 right? As [196] I have not heard from you, thought I had better write as it might be



(Testimony of P. R. Sheaff.)

lost in the mail, either going to you, or being returned here.

Hoping to hear from you soon, I am,

Yours truly,

W. N. CHATFIELD."

WITNESS.—(Continuing.) The paper referred to in the letter of January 12th, was the release he was going to send me to sign. (Mr. Gedney hands the witness five other papers.) I received these through the mail at Fallon, all except one. They are signed by C. O. Poole. Prior to receiving these letters, I had met Mr. Poole once in Hawthorne. I know that Mr. Poole was connected with the company for Mr. Chatfield told me so.

(The letters were thereupon admitted in evidence, marked Plaintiff's Exhibit 3 and read to the jury, and were as follows:)

**[Plaintiff's Exhibit 3—6 Letters, Poole to Sheaff.]**

**"PACIFIC POWER COMPANY.**

Bodie, California.

September 7th, 1911.

Mr. P. R. Sheaff,  
Fallon, Nevada.

My dear Sheaff:

I have your telegram of the 7th advising me that you are getting along as well as could be expected and that the progress is slow. This, of course, is quite natural as all electric burns, as you know, are very slow to heal but usually come out all right with proper care.

(Testimony of P. R. Sheaff.)

I have been away from this section of the country nearly all summer, as you probably know, having business in the east and on my return here a few days ago, was very sorry indeed to learn that you had met with an accident and immediately wired you to learn your condition. I [197] had hoped to make time this trip to go over and see you, but I find that important work takes me to Bishop and from there will have to return to San Francisco and then  
356 to Los Angeles, so that it will be three weeks or so until I can return to this section, but at that time hope to have a chance to see you. In the meantime, I hope you will not worry too much and know that I have you in mind all the time.

Mr. Chatfield will probably have an opportunity to come over and see you sometime very soon and will do everything he can to make you comfortable, I am satisfied.

You might be interested in knowing that we have just closed up contracts for line material to  
357 make a tower line extension 240 miles from Bishop down to San Bernardino, and material will be on the way inside of the next 30 days. This, together with some other power plants that we have in mind, will keep us busy for some time to come and hope that you will be able to get around and take part in some of the work before very long.

You must not become too impatient because, as before stated, it takes time for these burns to heal



(Testimony of P. R. Sheaff.)

and even after you are up it will be sometime  
358 before you will be able to go to work, but I  
feel confident that you will come out all right.  
My brother-in-law had an accident very similar to  
yours several months ago and was laid up for sev-  
eral months, losing a couple of fingers, and, I be-  
lieve, one or two of his toes, but he came out all right  
and is now out on his work practically as good as  
ever.

If you are able to write, won't you please write to  
me at my address as per enclosed card, Los Angeles,  
where I expect to be within the next week or  
359 so, and let me know if there is anything that  
I can do for you and whether you have proper  
care and treatment in your present location. [198]

With kindest regards, I wish to remain,

Yours very truly,

C. O. POOLE."

Los Angeles, California, September 29, 1911.

Mr. Perry R. Sheaff,

Fallon, Nevada.

My dear Sheaff:

You will doubtless think I am a poor correspon-  
dent having delayed so long in answering your letter  
of the 13th inst. but I have been away from the office  
for several weeks and this is the first opportunity I  
have had to read your letter.

360 I am glad to know that you are progressing  
favorably and sincerely hope that you will  
soon be able to get around again. I was disap-  
pointed in not having a chance to run over and see

(Testimony of P. R. Sheaff.)

you when I was in Nevada last, but urgent work would not permit it at that time.

I have sent the bills to Mr. Chatfield at Bodie and told him to take the matter up and make some satisfactory arrangements with you.

I am wondering if you would like to come down to Los Angeles where we can see you frequently and possibly the pleasant climate here would help you to regain your strength quicker than on the desert. Mr. Chatfield will call and see you again very soon on this subject and personally I would like very much to see you come down here where you can get the best of attendance and as before stated, the climate will permit you to be out doors as much as you like.

I expect to be in this locality now for the next ten days and would like very much indeed if you can write me and tell me how you feel about coming down. I want [199] you to know that I have not forgotten you, and I will do everything I can to help you on your feet again.

With kindest regards, wish to remain,

Yours very truly,

MANIFOLD & POOLE,

By C. O. POOLE."

"Los Angeles, California, December 30, 1911.  
Mr. P. R. Sheaff,  
Fallon, Nevada.

My dear Mr. Sheaff:

It seems to me as though the fates were against me in coming over to see you. I had made several



(Testimony of P. R. Sheaff.)

plans to do so but something always took me in the other direction.

I hear from you, however, through Mr. Chat-  
363 field and I am very glad indeed to know that  
you are getting along as well as you are. I  
know that you must feel discouraged in your recovery but as I wrote you before, such wounds are slow to heal and it requires the utmost patience to pull a person through under the conditions that you have had to labor with. I feel confident, however, that you will come out all right ultimately and am led to believe so more particularly on account of Mr. Granquist's recovery.

You will remember that Mr. Granquist, the carpenter at Plant 4 on Bishop Creek was very  
364 severely burned and for a time they thought  
he would lose one of his feet, but he has fully recovered and has been working for the past year. You must therefore not get discouraged but put on a bold front and stay with the game and I am sure that everything will come out all right in the end.

Mr. Chatfield will hand you this letter and he is going to see you in connection with your affairs in  
[200] Fallon. He will talk the whole situation over with you and I am going to ask you as a  
365 personal favor, to very carefully consider  
what he has to say. We want you to know that we are going to do everything for you that we can and want you to be fully satisfied that we will take care of you in the best way possible and just as soon as you are able to get around, we will find a

(Testimony of P. R. Sheaff.)

permanent place for you in one of our substations where there will not be very much running around to do.

I sincerely hope that you and Mr. Chatfield will come to a satisfactory understanding while he  
366 is there this trip and hope that I will have the pleasure of seeing you in the near future.

With kindest regards, I wish to remain

Yours very truly,

C. O. POOLE."

"Los Angeles, Cal., March 22, 1912.

Mr. Perry R. Sheaff,  
Fallon, Nevada.

Mr dear Sheaff:

I have not heard from you for a long time and am quite anxious to know how you are getting along.

I have been in hopes of shaping my trip so that I might see you, but it seems almost impossible for me to take the time to go that way. Won't  
367 you please write and tell me just how you are and if your feet are getting so that you can use them. We are doing a great many things down in this part of the country and are also preparing for considerable work up in the hills. I should like to know when you expect to be able to do some work so that I can keep something that will suit you. Would be glad if you will indicate about what class of work you think you will be able [201] to take care of and approximately about when we might expect you.

368 Some time ago you will remember I made a suggestion to you that you come down to Los



(Testimony of P. R. Sheaff.)

Angeles where we could see you and be of some assistance in your recovery. Would like to know now if you cannot make arrangements to come down here and spend a little time while you are convalescing and then we can talk over the question of your going to work and what class of work you would like, etc.

I sincerely hope that your wounds are healing and that you will have the use of both of your limbs without seriously impairing them.

369 With kindest regards, wish to remain,

Yours very truly,

MANIFOLD & POOLE,

By C. O. POOLE."

"Los Angeles, Cal., April 13, 1912.

Mr. Perry R. Sheaff,

Fallon, Nevada.

My dear Mr. Sheaff:—

A couple of weeks ago I wrote you and expected to have a reply before this time.

Will you kindly let me know at once whether or not you will be able to come down here so that I can talk over matters with you, and if you cannot come here will you be able to meet me at Reno in  
370 about a week's time when I expect to go through to Bodie? If you can do this I would appreciate it as I would like to see you anyway. We can then decide what would be best for you to do.

As before stated, we are putting in a large steam plant in San Bernardino and can find a place there that [202] I am sure would be satisfactory to you if you care to come down in this country.

(Testimony of P. R. Sheaff.)

If you can arrange to meet me at Reno as suggested, please let me know at once and I will  
371 wire you a day in advance of my coming, to enable you to reach Reno by the time I arrive there.

With kindest regards and hoping that I may see you soon, wish to remain,

Yours very truly,

MANIFOLD & POOLE,

By C. O. POOLE."

WITNESS.—(Continuing.) Those are all the letters that I received from Mr. Poole. Nothing was ever said to me about going to Los Angeles, California, except what was contained in those letters. I did not meet Mr. Poole in Reno. I wrote this letter to Mr. Poole on the day it was dated.

Mr. GEDNEY.—We offer it.

Mr. CANNON.—No objection.

372 (Letter admitted in evidence as part of Plaintiff's Exhibit No. 3, and read to the jury.)

"Fallon, Nevada, April 15, 1912.

Mr. C. O. Poole,  
Los Angeles.

Dear Sir:—

Yours of the 13th inst. to hand, and in reply will say that I have filed suit against the Pacific Power Co., and my case is in the hands of Curler and Mar-



(Testimony of P. R. Sheaff.)

tinson, of Reno, and therefore I must refer you to the above-mentioned firm.

Yours truly,

P. R. SHEAFF." [203]

Recross-examination by Mr. CANNON.

WITNESS.—(Continuing.) I have seen  
373 Mr. Gileece of Fallon. I don't think he was at the Overland Hotel at Fallon when I was injured. I think Mr. Gileece was one of the men that went with me to Fallon. I don't think he showed me a telegram that he received from the Pacific Power Company within a day or so after I was injured. I think there was a telegram giving him directions as to me and my care. I don't remember that I saw it or had it read to me. I think I did see such a telegram in the possession of Doctor Gardner about that time.

374 Mr. CANNON.—Q. I call your attention to this, which purports to be a copy of it, and ask you to read that right there, and see if it refreshes your recollection as to that telegram (hands paper to witness).

A. No, I don't remember seeing that telegram.

Q. You don't remember seeing that? A. No.

Mr. CANNON.—I will ask you, gentlemen, if you have a telegram reading that way, if you have I would like to have it (hands paper to counsel). Dated about July 18th, 1911, the day of Mr. Sheaff's injury.

375 Mr. CURLER.—We have not any such telegram. I cannot now remember if it is among

(Testimony of P. R. Sheaff.)

those papers, but we are getting those papers from Fallon, and if it is among them, I will produce it for you.

WITNESS.—(Continuing.) I received a telegram from Mr. Poole about that time. (Mr. Cannon hands paper to witness.) That looks like a correct copy of the telegram I received from Mr. Poole.

Mr. CANNON.—We offer this in evidence.

Mr. CURLER.—No objection.

(Telegram admitted in evidence, marked Defendant's Exhibit "O," and read to the jury.) [204]

**[Defendant's Exhibit "O"—Telegram—September 4, 1911, Poole to Sheaff.]**

"44 Paid Day Letter.

376 Bodie, California, September 4th, 1911.

To P. R. Sheaff,

c/o Grand Hotel, Fallon, Nevada.

Just arrived here and learned of your accident. Hope that you are getting along all right. Advise collect how you are and if you are getting good care; and if you are in need of anything. Expect to be over to see you soon.

C. O. POOLE."

(Charge Pacific Power Co.)

Mr. CANNON.—Will you let me have the original of Mr. Chatfield's letter, dated February 14th, 1912?

377 Mr. CURLER.—We admit, your Honor, please, that this is the original letter of which they have the copy. (Hands letter to counsel for defendant.)



(Testimony of P. R. Sheaff.)

Mr. CANNON.—A letter from Mr. Chatfield to Mr. Sheaff, dated February 14th, 1912, answering Mr. Sheaff's letter of the 13th, which was the letter in which he advised Mr. Chatfield that he would not sign the release.

The COURT.—I will allow the letter.

(The letter is marked Defendant's Exhibit "P," and read to the jury.)

**[Defendant's Exhibit "P"—Letter, February 14, 1912, Chatfield to Sheaff.]**

**"PACIFIC POWER COMPANY,**

**Bodie, California.**

**Feb. 14th, 1912.**

Mr. P. R. Sheaff,  
Fallon, Nevada.

Dear Mr. Sheaff:

Your letter of the 13th inst. received. It  
378 certainly surprised me very much, and in view  
of your giving no explanation, I cannot understand it. When I talked the matter over with you last month, I understood that everything was satisfactory to you, and I think that it should be. You [205] know, that there is hardly another company in the country that would have been as liberal to you in a matter in which they were in no way liable in any particular. However, this is a matter that it is up to you to decide as you think best.

Leaving all company matters aside, I per-  
379 sonally think that you will make the greatest  
mistake of your life by not accepting such a

proposition. Trusting your future for years to come in the hands of so-called 'friends' who, *you know*, have no interest or personal feelings toward you, except the dollars that they think might be made out of your misfortune, is, in my mind, too dangerous a proposition to tackle. I can truthfully say, that were conditions reversed—I would be only too glad to have my future assured and would lose no time in accepting it.

380 Hoping to hear from you soon, I am

Yours truly,

W. N. CHATFIELD."

WITNESS.—(Continuing.) I don't know as I made any effort to keep away from live wires without instructions while working in the Esmeralda power plant. I don't remember of coming in contact with any. I can't tell the width between those two long horizontal arms of the lightning-arrester—these timbers—two long parallel timbers; it would be approximately about six feet. Before leaving my work in going toward the substation, I didn't stop to examine the weather to see whether there was  
381 any danger of lightning. I didn't think about it at all at that time. I don't remember anybody telling me about the office of the lightning-arrester. I don't think anybody ever told me the difference between the live and dead sides of the lightning-arrester. I don't remember where I got this understanding that the *lightning* [206] was only for lightning. I did not take any means to



(Testimony of P. R. Sheaff.)

inquire while that contrivance was being erected, about whether my understanding was correct or incorrect. I don't remember asking anything about *that* the lightning-arrester was for and how it worked, I could have seen its construction if  
382 I had been around there and if I had noticed it, I suppose. I didn't say to Mr. Chatfield substantially or in response to his question as to how the accident happened, 'Of course I don't know, but I suppose I wanted something in the substation and without thinking walked into the live wire.'

WITNESS.—(Continuing.) I know Mr. Perrin. I had a conversation with Mr. Perrin in Fallon after the accident—about a year after. I don't think Mr. Perrin asked me how the accident happened. He didn't ask me how I happened to run into a  
383 live wire and get burned, and I didn't say to him "I don't know, I must have forgot." I have met Mr. Pittman. I had a talk with Mr. Pittman about the accident a few days after the accident. I can't remember whether or not he asked me how it happened. He didn't ask me how I happened to walk into a live wire, and that wire, and I didn't say to him in substance and effect, "I don't know, I must have forgot."

**[Testimony of Mr. B. F. Dickinson, for Plaintiff.]**

Mr. B. F. DICKINSON, called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

384 Direct Examination by Mr. CURLER.

My name is B. F. Dickinson. I live in Reno. I was born and raised there. I follow automobile work. Prior to that time, I was doing electrical work. I have been engaged in electrical work with the Truckee River General Electric Company at their power-houses, the Flash, Fayrad, and Mogul. I have been employed in electrical business about five years. I [207] was operator and power-house foreman. I was in Fairview about the middle of September, 1911. I was at the substation that comes in off the power-house line. I saw two  
385 substations there. I visited the power company's substation, I should judge. With reference to the line, it is the first one. I was alone. I made an examination of the apparatus there at that time. I examined the high tension lightning-arrester apparatus. That was just on the outside of the substation. There was just simply the lightning-arrester and the switch there.

Mr. CURLER.—Q. Did you notice whether there was any fence there or not?

A. I think there was a couple of wires strung around there at the time.



(Testimony of B. F. Dickinson.)

WITNESS.—(Continuing.) I made measurements from the center of the insulator number 386 1 (marked No. 1 on defendant's model) to the building—it was approximately three and a half feet. I know definitely the measurement as to the height,—it was five foot nine inches. I found wrapping on the pipe. I made drawings from the memoranda I took at that time, but I have lost them. I will make a further search for them.

**[Testimony of Lee Campbell, for Plaintiff.]**

Mr. LEE CAMPBELL, called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. CURLER.

My name is Lee Campbell. I am a journey-  
387 man lineman, of any kind of line construction—telephone, electric light, power line. I commenced line work the 10th of August, 1876, at Howard, Illinois, on the Illinois Central Railroad. I have been in the business ever since,—working continually with the exception of about three or four years when I followed prospecting. I am familiar with part of the Pacific Power [208] Company's lines. I have worked on them. The last time I worked on them was about the eighth day of December. I first went to work on the Pacific Power  
388 Company's line either in September or October, 1911. I worked on the lines with the con-

(Testimony of Lee Campbell.)

tractor in December, 1910, under contractor Hess, who built the line. I first worked for the Pacific Power Company, or Hydro-Electric, as it was then, in the latter part of June, 1911, at Fairview, Nevada, and riding the line between Fairview and Wonder and at Wonder substation. I inspected the line to see the condition of the line and the insulators, and

see that everything was O. K. The duties of a  
389     lineman consist in most everything included  
around electrical appliances—most anything  
you are asked to do around an electric line, anything  
from digging holes, climbing up poles, setting up  
machinery, or anything else. It is part of the duty of  
a lineman to work on live wires up to a certain volt-  
age or take his chances on live wires at any voltage.  
I received as my pay as lineman Five Dollars a day  
for eight hours' work. I have had a varied ex-  
perience in the construction of lightning-arresters—  
different makes—extending over in the neighbor-  
hood of twenty-three or twenty-four years. I

390     have put up as high as fifty in one town, on the  
Westinghouse system, Huston and Edison  
systems, Western Union Telegraph and Telephones,  
and all electric light lines—covering all kinds of  
makes of lightning-arresters. I had something to do  
with the construction of the lightning-arrester at  
Fairview, Nevada. I was under Mr. Greenleaf's and  
Mr. Halpenny's direction. At that time, I think Mr.



(Testimony of Lee Campbell.)

Greenleaf was Superintendent of Construction of the operating plant, and Mr. Halpenny was installing transformers—substation man, as I understood, and foreman on the job. The man that framed the

[209] timbers came from Bishop. He was a  
391 carpenter. Mr. Greenleaf, and myself, Cliff

Herring and Mr. Sheaff were around in the bunch too. Mr. Halpenny was there. He helped fix up some of the wires, I believe on there, and paint the gas-pipes—we were all working there together.

As near as I can describe it there is a pretty fair model in front of you—that clay model over there by the house; that model is better than I can describe it. These wires running from the top of the structure furthest from the house, to the house represent the

line wire, the live side of the switch going into  
392 the transformer from the air switch, that is the air switch; it would be the dead side of the

switch with the switch open, and it represents the line going there into the substation from the switch; it would be the dead side with the switch open. The wires running from the insulators next to the building to the insulators below represent the gas-pipe connections, on the live side, the line going to the horn gap lightning-arrester—that is what it is called.

The wires running from the insulators on the  
393 brackets on the structure furthest from the building represent what is known as the dead side or the side that takes the lightning to the ground. They were gas-pipe—quarter-inch gas-pipe, with a four and a quarter inch gap between the live

(Testimony of Lee Campbell.)

side and the dead side of the lightning-arrester. The four and a quarter inch gap is directly in the circle of the two horns, down between the pins there at this point (indicating on model). I was hired as a line-man. I helped set the poles down to the shaft where the ground-wire went to; I helped tie those  
394 wires on a fixture there on the bottom, and up also on top. (Witness goes to model.) I tied this one here and tied this one here (indicating on model). I tied the pipe to the insulator on No. 1.

Mr. CURLER.—We will call this Number 2.  
[210]

Mr. CANNON.—Yes.

WITNESS.—(Continuing.) I think I helped to hold that pipe No. 2 down while it was tied. I tied insulator No. 3 down, got up on the fixture here, and  
394 put my knee on there, and held that down, and tied it. I worked around there at different works, helped whatever I could do in the construction of this thing. I don't remember of doing anything else, except wrapping these wires around here, helping to bind this on; going around here and getting this ground wire down through here and up through here, where it went up to these poles here. I assisted in putting a wire from the end of the pipe from insulator No. 4 to the pipe on insulator No. 5, on to the pipe on insulator No. 6. I helped to get  
395 the wire running through between these horns, in a trench—I helped to get this wire from around this corner of the building here up to



(Testimony of Lee Campbell.)

the fastening. It ran from this corner of the building where that was attached to the ground-wire up to that point there, where it ran out over the line on the poles down to the shaft that had the water in for this ground-wire here. Mr. Halpenny, Mr. Greenleaf, Clifton Herring and I were all working on that thing together. We wasn't on that construction very long; I don't think it was over two hours

and a half, something like that. There was  
396 conversation between the four of us, Mr. Greenleaf, Mr. Halpenny, Mr. Herring and myself with respect to this appliance at that time.

Mr. CURLER.—What was said?

Mr. CANNON.—That is objected to on the ground it is hearsay—well, I object to it on the ground it is immaterial.

Mr. CURLER.—The purpose of this, if your Honor please, is to show that the officers of this company knew of the dangerous condition of this appliance.

[211]

Mr. CANNON.—If **that is the point**, I object to it on the ground, first, that no foundation is laid  
397 for the introduction of any such testimony; there is no testimony here that the contrivance was dangerous, or defective in any way; and, secondly, that it is immaterial, irrelevant and incompetent from any view of this case, whether it was or whether it was not. The only question that can be of any importance here, so far as the plaintiff is concerned, is whether or not he was sent to work at a place which was reasonably safe for the purpose,

(Testimony of Lee Campbell.)

in view of the dangerous character of the employment.

The COURT.—He may recite the conversation that occurred between these four parties.

He has already testified as to the position held by two of the men who were there.

Mr. CANNON.—Your Honor will allow me an exception to the ruling?

The COURT.—The exception will be noted.

The ruling of the Court in thus allowing the question to be asked and answered is here designated as

**Error No. 3.**

A. As near as I can place it word for word, I made the remark that that was criminal carelessness to leave that lightning-arrester that low, that close to the ground.

Q. What else was said further than that and  
by whom?

Mr. CANNON.—Before this question is answered, let it be assumed, if the Court please, that I renew my objection to each of these questions along this line as they are asked.

The COURT.—To the whole matter in relation to this conversation, unless it goes outside the lines I already indicated. [212]

Mr. CANNON.—I move to strike out this answer on the ground it is incompetent, irrelevant and immaterial, and hearsay.

The COURT.—Suppose you leave that motion until the conversation is in.



(Testimony of Lee Campbell.)

Mr. CANNON.—So long as we will not be considered to have waived it.

400       The COURT.—You will not be considered to have waived it, and after it is in, you can make such motions as you wish.

Mr. CANNON.—And consider each question objected to on the grounds already stated, and on the further ground there is no proof here at this time that the construction was in fact defective in any way, shape or form.

Mr. CURLER.—We expect to show that later on, your Honor. We cannot show it all at once. What was the last question?

Q. (The reporter reads the question.)

A. Well, it was just a general remark  
401       amongst the bunch of us there, Mr. Halpenny, and Mr. Greenleaf, and Mr. Herring, and myself, in regard to the height of that from the ground.

The COURT.—Q. What did each one say?

A. To bring the exact words down—

Q. As near as you can give it.

A. I made the remark it was dangerous and careless to go away and leave that in that position, and Mr. Halpenny stated to Mr. Greenleaf; he says, “Are  
402       you going to put that up now and leave it that way?” And Mr. Greenleaf says “We will have to put something here, it will not be safe to leave it any other way without a lightning-arrester here, or some protection on this end of that line.” That was the remarks, I believe, as far as the conversation was concerned. They [213] had a talk

(Testimony of Lee Campbell.)

between themselves, but I don't just recollect what it was, something in regard to lightning.

Q. Where was Mr. Sheaff at this time, if you know?

A. He was generally all around, first one place and then another, around the building; but I believe at the time I made this remark, I think he was  
403 standing around the corner on this side, doing something with the wire.

Mr. CANNON.—By “this side” you mean what, the north side?

A. The north side of the building; or he might have been just over the hill there; I don't know just where he was at the time of the conversation; I don't know just exactly where he was at the time I made this remark.

Mr. CURLER.—Q. Was he present with you and these other men at that time?

A. Not at the time that I made this remark,  
404 to the best of my knowledge; he may have been directly behind me, but I didn't see him; he wasn't in my sight at the time I made this remark.

Q. Mr. Campbell, basing your opinion upon your experience with electricity—

Mr. CANNON.—That is all of the conversation, is it, Judge?

Mr. CURLER.—Yes.

Mr. CANNON.—Your Honor, I move to strike out all the conversation as incompetent, irrelevant and immaterial, and hearsay; no foundation laid for its introduction; no evidence of any defective character



(Testimony of Lee Campbell.)

of the lightning-arrester itself; and as to whether or not it was defective or unscientific in any particular is a false quantity in this case and has nothing  
405 to do with it; and is merely the expression of the opinion of the witness on the stand. [214]

The COURT.—The motion is denied.

Mr. CANNON.—Your Honor will allow me an exception.

The COURT.—You may have an exception.

The action of the Court in allowing this line of questions to be asked and answered is here assigned as

#### **Error No. 4.**

Mr. CURLER.—Q. Mr. Campbell, basing your answer upon your experience as an electrician, was this lightning-arrester a standard construction with reference to the height of the live ends of the lightning-arrester?

406 Mr. CANNON.—We object on each and all of the grounds heretofore stated; and on the further ground the question as to whether it is standard or not standard is absolutely immaterial; the rule of law applicable to cases of this kind being, if the question of the construction is material at all, that it need only be reasonably fit for the purpose intended; it does not have to be of the latest design or construction; it does not have to be of any standard  
construction; it must only be, considering all  
407 the circumstances surrounding the particular place where it is to be used, and the manner in

(Testimony of Lee Campbell.)

which it is to be used, reasonably fit for the purpose intended.

The COURT.—There is no question but what that is the rule. One is not required to use the very best construction, or the very latest devices, but to use what an ordinarily prudent man engaged in the same business would have used at that time. I think this question tends to bring that out, and I will allow the question.

Mr. CANNON.—Your Honor will allow us an exception.

The COURT.—The exception will be noted.  
408 The action of the Court in allowing said question to be asked and answered is here assigned as [215]

**Error No. 5.**

The COURT.—It seems to me it would be better to ask what is the usual height in cases of that kind among men who are careful in that line of construction.

Mr. CURLER.—Q. Well, Mr. Campbell, what is the usual height of the live ends of a lightning-arrester of this kind among men who are reasonably careful in the construction?

Mr. CANNON.—Object to that, if the Court please, upon each and all of the grounds heretofore stated; and upon the further ground that it calls for  
409 the opinion of this witness as to what other people do who are reasonably careful, as to whether other people are reasonably careful, and, furthermore, that it is too general; it is very plain



(Testimony of Lee Campbell.)

that there might be one rule applicable to a lightning-arrester in a city or town where children are apt to get into contact with it, and an absolutely other and different rule, on the top of a hill in the desert or uninhabited portion of the State, where people are not likely to come in contact with it.

410       The COURT.—The objection will be overruled.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 6.**

A. I will have to answer that question by observation that I have saw along this power line. They have those lightning-arresters—some places they are seven feet from the ground, and some places twelve feet; in my opinion, I should not think they were safe less than twenty or twenty-two feet.

411       Mr. CANNON.—I move to strike out the answer of the witness on each and all of the grounds heretofore stated, [216] and to strike out that part which relates to his opinion, as not responsive to the question, because it calls for the usual construction.

The COURT.—The latter part of the answer may be stricken out on the ground it is not responsive to the question. The motion as to the remainder of the answer will be denied. You may have an exception.

Mr. CANNON.—We note an exception.

The ruling of the Court in refusing to strike out

(Testimony of Lee Campbell.)

the answer of the witness is here assigned as

**Error No. 7.**

412        Mr. CURLER.—Q. Mr. Campbell, in your experience prior to the time that you observed this structure—this lightning-arrester—had you ever seen a lightning-arrester of this character constructed so that the live ends of the lightning-arrester were as close to the ground as this one is?

Same objection, ruling and exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 8.**

A. Never.

Mr. CURLER.—Q. Mr. Campbell, did you ever see any other lightning-arrester constructed on the same principle that this one is.

413        Same objection, ruling and exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 9.**

A. No, sir, not outside of this present power line.

Mr. CURLER.—Q. Where have you seen lightning-arresters constructed on the same principles as this? [217]        A. I saw one in Aurora.

Mr. CANNON.—That is objected to on the same ground.

The COURT.—The same ruling.

To which ruling the defendant then and there ex-



(Testimony of Lee Campbell.)

cepted and said exception is here assigned as

**Error No. 10.**

414       A. Aurora and Lucky Boy Hill, or Lucky  
          Boy Town, and this one here at Fairview, and  
one at Wonder, Nevada.

WITNESS.—(Continuing.) I worked in Wonder  
a few days in June, or a half a day probably; I  
worked in September, the latter part of September  
or October, I forget which, and from that time I  
stayed in Wonder till July; then I went down to Fal-  
lon, and from Fallon I came back to Wonder, and in  
Wonder I have been with the company more or less  
ever since—at Wonder, Aurora, Lucky Boy, at those  
          three points. I never saw the machinery that  
415       furnished the power to this line but once in  
          the power-house. That was somewheres  
about the 12th of October, 1913, I was there in the  
station. I was in the Wonder substation on the 18th  
day of July, 1911, I was there as a visitor; I was  
making inquiry. I was in the Wonder substation  
on the 2d day of July, and I was in there on the 5th  
and 6th, along the 6th day of July, and the evening  
          of the 5th—just stepped in and just stepped  
416       out again. I have been there since then. I  
          can't remember the date that I went back and  
went to work for the Company there at the substa-  
tion—took charge. I made the measurements be-  
tween the horns at the time the arrester was con-  
structed, with a block—sawed a block off and made  
it that distance, four and a quarter inches, if I rec-  
ollect right,—under Mr. Greenleaf's instructions. I

(Testimony of Lee Campbell.)

did not determine the [218] distance that the live and dead ends of the arrester should be put apart. Mr. Greenleaf determined that.

417 Mr. CURLER.—Q. Do you know from your experience as an electrician, whether the distance between the live and dead ends of the horns of the arrester is determined by the amount of voltage the line carries?

Mr. CANNON.—Objected to on the ground it is incompetent, irrelevant and immaterial, and outside of the issues, in this, that there is no charge in the complaint that there was any defect in the respect mentioned, as to the distance between the horns of the arrester.

The COURT.—Well, I will allow that question, for its bearing on the question as to how much electricity the line was intended to carry; and then  
418 whether such a construction was sufficient with the line carrying that amount of electricity.

Mr. CANNON.—Under that ruling, I would add to my objection that the amount which the line was capable of carrying is immaterial as testimony for the purpose of showing how much it was actually carrying on the 18th of July, 1911.

The COURT.—It is not admitted for that purpose. It is only admitted as to its bearing upon the structure itself, whether it was negligent construction under the circumstances, or not.

Mr. CANNON.—As to that, if your Honor  
419 please, the only charge in the complaint as to defective construction is that it was not high



(Testimony of Lee Campbell.)

enough from the ground; there is no other charge.

The COURT.—That is the only testimony of defective construction that you have here so far. It is only for its bearing on that question. [219]

Mr. CANNON.—Your Honor, may I simply have it considered my objection as to the character of testimony of defective construction, may be repeated, and your Honor makes a ruling, and I take an exception.

The COURT.—Certainly.

420 The action of the Court in allowing said question to be asked and answered is here assigned as

### **Error No. 11.**

A. I do; that is the way they measure it.

Mr. CURLER.—Q. What amount of voltage on the line—now where the arc is not drawn—but what amount of voltage on the line will cause the electricity from the live end of the wire to jump to the dead end of the wire?

A. Well, from observation, the volt meter in the substation carrying one hundred and ten volts, and an increase or surge on the line there—the  
421 only time I saw it go across was at Aurora; and the volt meter went round to about 145 or 150 volts, went across the arc, and broke one of those blocks down below.

Q. Do I understand you to say, Mr. Campbell, that you are not a technical man, and that you don't know how much voltage would be carried on these wires, that would step down through a transformer

(Testimony of Lee Campbell.)

that would make sixty-six hundred volts, and would read on the lower end one hundred and ten volts?

A. The reading on the—well, I would not  
423-43 go into detail on that, no.

Q. You mean to say that you can't go into detail upon that?

A. No, I can't go into detail in regard to that. That is, if you will let me explain myself—if I was called on examination to explain why I know these things, I am not [220] able to figure it out; I am not a mathematician.

Mr. CANNON.—I think the witness has explained before he was a lineman; he has not qualified as an electrician at all.

Mr. CURLER.—At the time that you say a block went out, did you know how much voltage was on the high tension wire?

A. No, I did not—the exact volts I don't know.

WITNESS.—(Continuing.) The object of this lightning-arrester, or any other arrester,—this part here is simply to take the overcharge voltage that comes in on this wire; if the voltage increases  
1 on this wire, such as from lightning, or a machine running away, or anything else, the object is to carry the excess voltage to the ground, and save the transformer. Now that applies to all lightning-arresters, of all types. It is determined by the voltage carried on the line; and when there is any excess voltage running down on this line, whatever it has on it; if this should be to carry fifty-six thousand volts, and the voltage increases, it arcs



(Testimony of Lee Campbell.)

across this, and travels up these arcs, until it  
2 breaks. The object of these curves on this  
lightning-arrester here, leading back this way,  
is for the arc to travel up, and continually pull away  
from one side to the other. That is about all there  
is to it. Whenever an overload goes across, this  
takes care of the overload or overcharge, or surge on  
the line. By surge I mean excess voltage. Where  
this building stands, the ground was just leveled off  
there, and it was also levelled around here, with this  
waste, going back in here, running off down the hill,  
and sloping over to this corner here, the south-  
3 west corner. There was some rock piled right  
here—the northwest corner, and running  
down this way, sloping off to the west—I guess it  
would be the northwest, if it was put square on the  
compass; I think this house [221] faces the south-  
east, that is, if you put the compass on it, and this  
would represent the north, that would be south, this  
was west and this was east (indicating on model).  
Now, along here between this lightning-arrester and  
the fence was level ground; to the northwest corner  
and to the southwest corner is loose rock piled  
4 up over the hill here and running down this  
way—all loose rock. Commencing about here  
was about the first of the bad rock; there was some  
loose rock right around here (point marked “A”).  
There was loose rock in here (point marked “B”);  
this was filled up in here too. Between the lightning-  
arrester and the building was level ground. Well,  
right from about here is where that ground com-

(Testimony of Lee Campbell.)

mences to slope—from there down that way about one foot in four—from about that position (indicating on model). From the lower timber of the arrester on the north side, to the opposite  
5 point,—a point opposite the same timber on the south side, was rough, made ground.

Mr. CURLER.—Q. Will you draw a line across there from where the ground started to slope?

(Witness draws line on model.)

A. Somewhere about there. It is all filled in down in here; from this point here out around about that way, was all rough ground, carried on out; it was the waste ground taken away from the excavation, and throwed out in that direction, to the southwest.

WITNESS.—(Continuing.) The ground west of the lightning-arrester was all made ground,—  
6 rough. Part of it sloped about one foot in four, and some of it was pretty steep; some of it sloped, and a man would almost fall down over it, walking over it, especially this southwest corner here. The point between the lightning-arrester and the switch was rough ground down there; it was all rock, all excavated around the building there. I think the biggest was probably not over [222] a foot square, and maybe some twelve or fourteen—about ten or twelve inches, I think would be about the biggest rock, about a foot square—something that  
7 would come out of an excavation—all mixed together. There was quite a few of them scattered around over this point here, down in through there; these rocks here were the smaller



(Testimony of Lee Campbell.)

ones; closer to the level ground was the smaller rocks, the larger rocks were farther away, farther towards the west. The ground from the point "D" passing along on the north side of the arrester to the east side of the arrester, out to the southwest corner of the building was smooth. There was a space over there on the southwest corner of the building that was smooth, and the rest of this was rough, filed with made ground. When the lightning-arrester  
8 was being erected in the substation at Fairview the transformers, when they were working on the inside, could be heard on the outside of the building in the vicinity of the lightning-arrester, provided the current was on, they could be heard on the outside of the building in the vicinity of the lightning-arrester, with the exceptions of the vibrations of the telephone fastened on the corner of the building, which would make so much noise, it would be impossible to hear anything except the vibra-  
9 tions of the telephone line. I don't know whether or not the telephone was there at the time of the accident.

Cross-examination by Mr. CANNON.

You bet I have heard that purring noise on the transformers frequently. It is a peculiar sound, just like a rattlesnake. In a building with corrugated ironsides you can hear through that corrugated iron very readily. When I was working around there on that lightning-arrester, that is, on the end of it, there was no current on there. I al-

(Testimony of Lee Campbell.)

ways worked as a lineman and received pay as  
10 a lineman. I did not work as a laborer in the  
month of June, 1911. A lineman [223] is  
supposed to know all of the business in connection  
with the running of lines, or handling of lines, alive  
and dead, and to do any kind of wiring around a sub-  
station or plant. I know what pay I was getting.  
My pay was five dollars a day. In the month of  
June, 1911, my pay was not four dollars a day. I  
received a check from Mr. Halpenny at the post-  
office in Wonder at the rate of five dollars a  
11 day. I think it was two checks, I don't know.

I believe I received one check signed "Hydro-  
Electric Company." I think I received two checks  
for those June services. I don't even recall the  
amount of those checks, nor the number of days em-  
ployed during the month. Mr. Halpenny kept my  
time. I kept track of the time myself at the time in  
my mind. When I came to settle up with Mr. Hal-  
penny I certainly would know whether his figures  
were correct with mine or not.

When I came to settle with Mr. Halpenny,  
12 I think he told me I had so many days coming  
and we agreed. We didn't agree on the  
amount to be paid. He claimed I was to be paid four  
and a half, and I claimed five dollars, and he said he  
would allow me enough overtime to make this five  
dollars a day pay. His side of it was that he was  
only crediting me with four and a half a day as line-  
man. When I went to work, I didn't have any  
agreement on the subject. I believe that check was



(Testimony of Lee Campbell.)

the first check I got from the Pacific Power Com-  
pany. Mr. Greenleaf hired me. Mr. Green-  
13 leaf and I didn't have any agreement as to the  
amount of pay. I hired out as a lineman, and  
when I came to settle up with Mr. Halpenny, he fig-  
ured my pay as lineman at four and a half a day. I  
insisted on five dollars a day and got it. It is not a  
fact that I simply got four dollars a day, and not five,  
and not even four and a half. I don't remember if  
I worked for the Pacific Power Company from  
the 12th of June to the [224] 19th of June,  
14 both days inclusive, and during that time I  
put in the equivalent of eight days and six  
hours. I did not put in eight days and six hours and  
receive for my services two checks, one for nine dol-  
lars, and the other for twenty-six dollars, being the  
equivalent of four dollars a day. All the checks I  
received, to my knowledge, in the month of June  
were two checks, the amount of both checks I have  
forgotten. I received the first check as per his time  
book, and his wages, and I would not accept  
15 that, and he agreed to allow me enough over-  
time to make my salary five dollars a day—  
that is the cause of the second check. This light-  
ning-arrester is of a certain recognized type called  
the horn gap lightning-arrester. It is used on the  
Pacific Power lines alone, as far as I know. I have  
read the instructions that come with all lightning-  
arresters.

Further Direct Examination by Mr. CURLER.

The exact height of the live arms of lightning-ar-

(Testimony of Lee Campbell.)

resters which I have constructed, other than this one, I have not measured, but I think it is about eleven feet. That was the lowest constructed lightning-arrester I ever saw—the nearest to the ground.

16 The next lowest to this one here is in Aurora, close to the ground, and I think it is about eleven feet—I never measured, but I think it is about eleven feet to the ground from the live side.

Mr. CURLER.—Q. Mr. Campbell, is this the ordinary type of lightning-arrester, generally used?

Mr. CANNON.—We object on the ground it calls for the opinion of the witness, and is incompetent, irrelevant and immaterial, and outside of any issue in this case.

The COURT.—Well, he has testified that he never saw this type except in certain places already,  
17 has he not? I think he has testified to seeing other types of arresters in [225] other places. It seems to me he has already answered that in response to your question. You can ask the question, but it seems to me it has already been answered.

Mr. CURLER.—I would like to have the question answered.

The COURT.—Very well.

Mr. CANNON.—We note an exception. Would your Honor allow me to add one other ground to my objection; namely, that the only point made in the pleading as to any defect in this arrester, is as to  
18 its distance from the ground. There is not any charge in the complaint, as I have read it, that states that the lightning-arrester itself



(Testimony of Lee Campbell.)

is a defective construction, or not one of general and ordinary use. Let me read the allegation in the complaint. (Reads allegation III in the complaint.)

(Argument.)

The COURT.—Well, I am exceedingly doubtful about it.

Judge CURLER.—But you are so confident about the matter, I will allow you to put it in. The defendant may have an exception.

Mr. CANNON.—We note an exception.

The COURT.—You may have an exception  
19 for the reason you have stated.

The action of the Court in allowing said question to be asked and answered is here assigned as

### **Error No. 12.**

A. That is used by some companies.

Mr. CURLER.—Q. Can you state whether or not it is in general use by companies engaged in carrying on the business of transmitting electricity in high voltage over wires?

Mr. CANNON.—The same objection, and on the further [226] ground it calls for the opinion of the witness as to what constitutes general, use, and requires him to testify outside of his own experience, and anything outside of his own experience  
20 would be hearsay upon the question of general use.

Mr. CURLER.—I will add to the question, basing your answer upon your general experience as an electrician.

(Testimony of Lee Campbell.)

Mr. CANNON.—I will add to my objection, therefore, that his own experience cannot be held to constitute general use; and that, therefore, it calls for his opinion.

The COURT.—It will be the same ruling, and you may have an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 13.**

21       A. Not in use except by the present company, the Pacific Power Company, or the Nevada-California Power Company, to my knowledge.

WITNESS.—(Continuing.) I believe the first time I ever saw Mr. Sheaff was the 14th day of January, 1911. He worked in the same construction crew that I was in, between where the King Mill is now, south of Rawhide, near Dead Horse Wells, to Wonder, Nevada; he worked in the crew constructing the line between there and Wonder. Up to within a few miles of Wonder. Subsequent to  
22       that he worked in the same crew I did, till about the second or third day of February. Subsequent to that, I worked with him a few days right around Fairview there; he was in the crew in which I worked over there at Fairview, in the construction of the line between Dead Horse Wells and Wonder, he started in digging holes, and we were short a man in the wire gang, and I requested the foreman to bring him back. He came back, and did what we call “bull-ringing” of the wire from the



(Testimony of Lee Campbell.)

wire wagon over to the telephone [227]  
23 poles. I have never seen Mr. Sheaff work on  
live wires in my presence.

Further Cross-examination by Mr. CANNON.

Mr. Sheaff started in digging post holes on the main line being built from Lucky Boy Hill substation to Wonder, in January, the line started out in December, 1910. Mr. Sheaff continued digging these post holes not very long, just a few days. There were three separate gangs, one gang digging holes, one gang setting poles, and the wire gang. Mr. Sheaff after being at work a few days digging post

24 holes, was taken from that work and put into  
the wire gang. He was placed at the particular work of bull-ringing the wire from the wagon to the poles, carrying it over to the poles—the sagebrush was pretty high. That work is what we call the groundhog's work. He was working in conjunction with the wiring men. All the wires were dead at that time, and nobody was working with live wires at that time. I had never seen a lightning-arrester of this type up to the time of the accident, besides this particular one. I knew of the horn gap

lightning-arrester in May, 1910. Prior to  
25 that time I had known of electrolytics, and  
Westinghouse types, and Sterling type, and

various types. I am not in a position to testify from my own knowledge to what extent they had been used outside of my own personal observation. These wires or pipes on that so-called dead side are not connected up with any wires, only with the ground wires.

(Testimony of Lee Campbell.)

On the opposite side the wire or pipe is connected with the high tension wire above, and those two wires or pipes, one on the dead side, and the other on the live side, are called respectively horns. This

26 curve turning around on one side in one direction and the other side in the opposite direction are known as the horns of the lightning-arrester.

The space between those two horns at the curve is [228] called the space between which the arcing distances are supposed to jump—the gap. The object of this construction is this, that if there should be a lightning storm, and a heavy charge of lightning should come on the high tension wires by way of a surge or a sudden increase in the voltage, that if it

gets too high, it will be relieved by jumping 27 across this gap, and then being conducted to the ground. It arrests or stops the *the* destructive operation of the lightning. The distance

of the gap is spaced according to the load which it carries. In the ordinary voltage it is designed to carry there would be no jump. While the wires are charged on the dead side, the wires are supposed to be dead, the theory being that they would be dead unless electricity jumped across from the live to the dead wires—there would be no regular current on

these dead wires at all unless it should jump 28 across from the high tension wire. Where it jumps across it makes an arc. It carries a

blaze of current, and that blaze or arc conducts electricity. When electricity jumping from one point to another forms what is called an arc, it enables, as



(Testimony of Lee Campbell.)

long as that arc remains, the electrical current to continue to pass through it. If an arc were formed at this point, and continued there, it would carry away, not only the lightning or supercharge, or surge, but it would carry away a percentage of the current regularly passing along the line. The

29 spread of the horn on top is to break the arc on top. The arc has a tendency, for some rea-

son or other, to rise instead of to fall. If an arc should be formed in this gap in that particular lightning-arrester, the tendency of that arc would be to rise. As it would rise, it would stretch until it breaks. As the distance between the wires becomes greater, as the arc rises, the arc would be elongated or stretched. In that work in constructing the lightning-arrester of this type, it is necessary to provide

a sufficient clearance for that arc when it

30 [229] rises. It would not do in constructing a lightning-arrester of that type to have it too close to the high tension wires above. It would have to be constructed a sufficient distance from the high tension wire above but not in *relative* to the position of that one there. In other words, that could be set on one side way over here somewhere, or set away over here somewhere (indicating). I did not help build this original fence prior to this accident. I do not know that fence was there. The

gang I was working with in June, did not, nor

31 nor did I, work on the fence at all. When I made this remark to the men that were engaged with me in building that lightning-arrester

(Testimony of Lee Campbell.)

there was no fence around it at that time. According to my judgment this model is a very fair representation of that lightning-arrester. It is a very close model.

Mr. CANNON.—We offer this model in evidence.

Mr. CURLER.—We object to it at the present time, if your Honor please, upon the ground it has not been shown to be correct or accurate.

32 Mr. CANNON.—I think there is sufficient foundation laid. This witness testifies that it is a very close model; that is as near as any model can get.

Mr. CURLER.—There has not been any testimony as to whether this model is constructed on a scale, as to whether these horns on this model show the proper distance from the ground on the scale, or whether these horns show the proper distance from the building on the scale.

Mr. CANNON.—I am willing to give Judge Curler an admission, as I told him I would this morn-  
33 ing, as to the distance from the center of the insulator on the live side, to the end of the pipe.

Mr. CURLER.—Possibly, your Honor, we can agree [230] so that the model may go in, because we would like to have it go in on the basis that it is accurate. We believe it will assist the Court and jury to understand this case more thoroughly.

Mr. CANNON.—It will be admitted that the arm of the lightning-arrester on the live side from the center of the insulator projected out two feet and



(Testimony of Lee Campbell.)

three inches, which would on the model make  
34 two inches and a quarter.

Mr. CURLER.—With that correction on the model, we have no objection to it.

The COURT.—It will be admitted then.

Mr. CURLER.—It is understood that that also applies to both sides, the horns being the same distance from the arrester?

Mr. CANNON.—I don't know, I will see whether that is so.

The COURT.—It is admitted otherwise, this is made to a scale, and the scale is correct, and the distances?

Mr. CURLER.—What measurements I have made on it.

The COURT.—There has been no proof as  
35 to that point, and, of course, it can only go in for what it has been shown to be.

Mr. CURLER.—It is also admitted that the dead arms of the lightning-arrester extended two feet and three inches from the center of the insulator?

Mr. CANNON.—Yes. That would on the model make two inches and a quarter.

Mr. CURLER.—Can't those wires be corrected?

Mr. CANNON.—I think we can make an extension on there, or something, at recess. Otherwise you have no objection to this being admitted as being built according to scale, and we are willing that it be subject to correction, even then, if you want to

correct it. [231]

(Testimony of Lee Campbell.)

36 Mr. CURLER.—As to these measurements, they seem to be correct your Honor, and if there is anything else, I will suggest it to counsel. You are not including this fence?

Mr. CANNON.—I am including the whole construction.

Mr. CURLER.—We cannot admit as to this fence, your Honor.

The COURT.—Then it is admitted in evidence as illustrative of the evidence so far offered, and as being correct in so far as it has been admitted to be correct, and proven to be correct.

Mr. CANNON.—Yes, and as being, I think  
37 what the witness calls a very close model. I think we are entitled to have it admitted for that purpose.

(Model marked Defendant's Exhibit "Q.")

WITNESS.—(Continuing.) This whole construction, this Fairview substation and lightning-arrester, were all on the top of a little knoll, but the top of the hill had been leveled off so as to give sufficient room for construction. On the south side of the substation, I think there is about four feet of comparatively level ground there. The north side is  
about twenty or twenty-five feet, I should  
38 judge, of very level ground, that is, running out straight to the north of the building and a little bit to the west. On the south side, I should judge, it went off down grade about one foot in four, maybe fifty or sixty feet, and then there was a gulch down there, between there and the Nevada Mill.



(Testimony of Lee Campbell.)

After that twenty or twenty-five feet of comparatively level ground, on the north side, it went down to the northwest. On the west side it went down pretty steep just outside of the switch. On  
39 the east side of the building, I think there was about thirty-five feet; a wagon road ran right in front there, and then it went off to another draw. They started to excavate the building there, and [232] then they changed the plans and excavated more off back this way than should be necessary; then they turned the building around the other way; of course, that made all that smooth ground in between that lightning-arrester there and the building. Then the building was subsequently not put on the ground and that left all of that comparatively  
40 level up to about the center post of the lightning-arrester. Then from that point out to the high posts, the ground was covered in some instances, by loose rock—small rock and large rock—general excavation. This was called made ground. These very large rocks I speak of were on the outer fringe or the outer edge and inside of that outer edge would be the smaller rock. These three blocks that appear on this model were not in at the time the arrester was practically finished by my gang. When I  
41 left there that wiring was complete and the insulating was in. On the live side the wiring was built up to and attached to the high tension wire overhead, and the ground wire which I spoke of, which is represented by this light copper wire, was also in. That ground was practically as

(Testimony of Lee Campbell.)

shown in the model. This copper wire was carried to the ground and put into a trench and covered up with earth and carried out of this enclosure. The enclosure was not there at that time. It was carried to the corner of the building and was carried from

that point over to the shaft. I should judge  
42 the shaft was about five or six hundred feet from the substation. It was carried quite a

long distance from the substation itself, and then the wires were put down in some abandoned shaft on a big copper plate and into the water at the bottom of the shaft. The object of that was to furnish a proper ground for any supercharge that should jump across this gap and go out through this ground; it would be carried into this well or shaft which was

five or six hundred feet away, and there go  
43 into the earth. The country was very dry over there, and they had to have a connection

and sometimes they haven't got water [233] to make a false moisture in the ground, or create a moisture; if the earth is dry they have no contact to make a ground, sometimes, to carry off this current. The water itself would be a sort of resistance. If you put it in water and did not connect with the earth you would have more or less resistance through the water. It is not a fact that the idea was to get it in  
a place where there would be resistance.

44 There would be some resistance so that resistance would aid in some measure in breaking the arc after it had already formed—a dead ground would break the arc. A dead ground would not have



(Testimony of Lee Campbell.)

a tendency to keep the arc alive. It is to get a conductor to carry that excess current to the earth, and take it clear off the line entirely; the idea of that, to get down the resistance, would simply be to decrease the voltage.

Mr. CANNON.—Q. Is it not a fact if your ground does not furnish any resistance at all, you will  
45 not only carry off the excess once your arc is formed, but you will carry off the regular current itself?

A. You will carry off—the object of the lightning-arrester—

Q. (Intg.) Can't you answer the question. Read the question. (The reporter reads the question.)

Q. Is that true?

A. Well, I believe I stated that I am not a technical man, and to answer that question I would have to go into—

Q. If you consider that any way beyond you, Mr. Campbell, I will withdraw it.

A. Yes, sir, I do.

WITNESS.—(Continuing.) As this was constructed when I left it on that day before the  
46 accident, the ground was made so that a supercharge, if it jumped across this gap, would immediately be conducted to the ground, and it was so constructed that the ordinary charge, or ordinary load that would be carried on the [234] high tension wires doing business ordinarily, would not jump across that gap. That space was four inches and a quarter, and the material of each of

(Testimony of Lee Campbell.)

these pipes was quarter inch iron and a good conductor. Mr. Sheaff was in the gang that was building that lightning-arrester at various times.

47 He was not there continually while we were building that. He was not right around in the vicinity there during the whole construction; he was not there all of the time. He was on that knoll some place, the exact spot, I don't know, just where he was; he was working on other work besides the lightning-arrester, at times, and as far as the lightning-arrester is concerned, I don't think he had very much to do with the construction of it. I only saw

him bending the irons or carrying the irons or  
48 helping to bend them. I didn't see him bending the irons. I saw him with the irons in his hands carrying them, I believe from the southeast corner of the building, around there, coming through here (indicating on model). My memory is not just clear as to whether I saw him bending the irons. He was around there doing whatever he was told to do, but what he was doing at that particular point, I don't just remember. I don't know just what particular part he took in the construction of that lightning-

arrester. I could not state positively how  
49 much he was around while work was going on, or how much he was absent while work was going on. I did not set myself as a watch on Mr. Sheaff. It was none of my business to see whether he was working or not. I was there to do my own work and paid no more attention to him than I would to any other workman. At this talk which I said



(Testimony of Lee Campbell.)

occurred among us there while this construction was going on, after I had made this statement as to my opinion as to how this was being constructed, the question of a fence around it was discussed.

50 Mr. Greenleaf said he would have a fence constructed about [235] the place.

Redirect Examination by Mr. CURLER.

This is a picture of a horn type lightning-arrester (witness refers to picture in a book handed him by counsel). This picture here shows the live wires fastened to the bottom of the lightning-arrester. On the model, that is right here (indicating on model). According to that cut there, the live side, the lines there would be attached right to this point here (indicating on model). If this were con-

51 structured as the one that was shown to me in the picture, it would have to be constructed in a different place than it is now. It would have to be out on one side or the other of the line. This line on the left-hand side of the picture represents the live line. This represents the feed-wire of the live line. If this lightning-arrester were constructed as was the one shown me in the picture, this lower portion of the arrester would be attached to the live side here, and this would be the air space; this  
52 would be cut off here, according to that tap here, the live line should be tapped here; this would be cut off here, and fastened onto this, the same as this is here; these four sides would be a duplicate of the live side down here on this line.

Mr. CURLER.—Q. If this arrester were con-

(Testimony of Lee Campbell.)

structed as was the one shown you in the picture, is it not a fact that the horns would curve from here—from the line up here?

Mr. CANNON.—Objected to as leading and suggestive—clearly leading.

The COURT.—I will allow the question.

53       The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 14.**

The WITNESS.—Before answering that, if I am allowed [236] to—the question is, where would they be connected in regard to that there?

Mr. CURLER.—Yes. Supposing this to be the line, and this to be the line, as shown in the picture.

A. That would have to be above those, according to that diagram there, in regard to the arc, showing a break of the arc above the line, according to  
54       this cut here; it is relative to the position of the frame work on which it is constructed; you have to make the connections from the line to your frame, in order to clear your horn gaps.

WITNESS—(Continuing.) This picture which you show me shows the legs or posts carrying the arms of the lightning-arrester extended above the line. If this lightning-arrester had been constructed as was the one shown in the picture, the lower arms of this lightning-arrester would have been fastened to the line up here, this side, the live end, and ex-



(Testimony of Lee Campbell.)

tended up over, that would come right out  
55 there and would turn right over like this, on  
your dead side right here, breaking your gap  
above the line, according to that out there. If that  
had been constructed according to this cut with refer-  
ence to the live line, the height would depend on the  
height of the live end to the earth, whatever that  
might be; I don't know relative to the height of that  
line. It doesn't make any difference whether the  
overcharge which is relieved by the lightning-ar-  
rester is caused by lightning or some other cause.

Whether it is lightning or artificial lightning  
56 does not make any difference. The object is  
to relieve the overload, that is, the over-  
voltage,—surcharge. If that line were struck by a  
heavy volt of lightning on the wires beyond several  
of the poles, the lightning would take the nearest  
point to the earth, which was not consumed through  
the transformers. There is no apparent reason why  
that lightning-arrester could not [237] have been  
built at another point, either north or south of that  
substation. If it were built either north or south of  
the substation, it would not have been necessary to  
have constructed the live arms so close to the  
57 ground. They could have been built at any  
height at all.

Recross-examination by Mr. CANNON.

There is nothing automatic about that lightning-  
arrester. An automatic appliance is something that  
does not work unless it has some help, and it must  
have some force or other, as I understand it to make

(Testimony of Lee Campbell.)

it work. A lightning-arrester works solely by excess current. If there were not a man within a mile of this substation and there should be a supercharge of lightning on the wire, the lightning-arrester would be supposed to carry off this overcharge of  
58 current. From that standpoint it would be automatic. If a great deal of power is being under in any direction from a high tension wire, and that power is suddenly shut off and is not used, it would cause the power to back up on the machine from which it generates, like suddenly backing up of water.

Mr. CANNON.—Q. What becomes of the excess? Isn't there some backed up there instantaneously, as water would be backed up?

A. Well, I don't know.

WITNESS.—(Continuing.) I told Judge Curler that this could be constructed so as to have it  
59 above the high tension wires. If this form of lightning-arrester were constructed above these high tension wires, it would not be practically upside down. This live wire would not have to be brought up, instead of going down and curving around, and would not curve around. In this picture the feed comes in from the bottom. This is the live horn of the lightning-arrester. The way that is constructed there, if you wanted to build in the air, and bring in feed from the bottom, it would be necessary to [238] carry those wires above this horn, above the high tension wires. It would be  
60 necessary to carry the live horn above the high tension wire. It would then be necessary



(Testimony of Lee Campbell.)

to have the dead horn constructed opposite the live horn. It would not be necessary to turn this construction upside down because you simply raise that construction, that above here, just as it is. You would not then have to raise your feed wire. Here is your feed wire; you could construct the fixtures on the outside of the line here, carry up your frame clear above the wires, make the tap to the live side  
of the horn gap here, and go across just the  
61 same; and this would break the arc here just the same.

Mr. CANNON.—Q. Supposing we were to disconnect this live horn from the insulator below, and carry it around in its same position, until we got it above, then we would have it following practically the same angle above as it follows below, and coming around over this way, wouldn't we, Mr. Campbell?

A. You would if you didn't release this connection here; I would change my connection down at this end.

Q. Leave it without releasing that connection; then we would have that wire standing above,  
62 as it now stands below; wouldn't we?

A. That is a question—

Q. (Intg.) That is a fact; if we did that it would be standing there, would it not?

Mr. CURLER.—We object to the question; it does not follow what the witness said, or follow the model given in the book.

(Testimony of Lee Campbell.)

The WITNESS.—That is correct, what he says is correct.

Mr. CANNON.—Q. Oh, what he says is correct, is it?     A. Yes.

Q. Now, if it was done as I say here, it would be in [239] the position I have described,  
63     would it not?

A. If it was done the way you have described it.

Q. It would be in that position?

A. Yes, but I would not attempt doing anything of that kind.

WITNESS.—(Continuing.) If you were to have your feed-wires come in from the building, as shown in this particular cut, you would have to carry your feed-wire down. Then in place of having a live wire down here in the shape of a horn, you would have a feed-wire down here practically the same place, both live wires; that would be alive here, and that would be alive here on that side.

64     Mr. CANNON.—If the Court please, in connection with the cross-examination of Mr. Campbell, I desire to offer certain checks that were not here at the time he was cross-examined, and which counsel agreed could be offered without laying any foundation, subject to their objection as to their admissibility. I now offer those two checks.

Mr. GEDNEY.—We object to these checks upon the ground they are immaterial, irrelevant, and not cross-examination, and not evidence under the issues in this case.



(Testimony of Lee Campbell.)

The COURT.—Mr. Campbell was questioned  
65 about these very amounts, if I am not mis-  
taken, the twenty-six dollars and the nine  
dollars. The checks will be admitted.

Mr. GENDEY.—I ask to note an exception.

The COURT.—The exception will be noted.

(The checks are marked Defendant's Exhibit "S,"  
and read to the jury.)

**[Defendant's Exhibit "S"—Checks.]**

"Pacific Power Company.

~~Not negotiable.~~

No. 119.

Wonder, Nev. 6-30-1911.

Pay to the Order of Lee Campbell.....\$26.00

Twenty-six and no/100.....Dollars.

6½ days @ 4.00.

Account of Trans. Line Maint. up to and  
66 including & Wonder Dist. System.

6-30-1011 [240]

PACIFIC POWER COMPANY,

By R. H. HALPENNY.

To PACIFIC POWER COMPANY,

Bodie, Cal.

(Stamped)

419 PAID Jul. 22, 1911.

[Endorsed]: Lee Campbell. Klaus & Burns, by  
Jas. Burns, Pay to the order of The German Ameri-  
can Trust Co., Denver, Colo. The Cuban Cigar Co.  
Pay to the Order of J. S. Cain & Co., Bodie, Cali.  
The Anglo & London Paris National Bank. Pay  
Anglo & London Paris National Bank, San Fran-

cisco, Cal., or order Denver National Bank, Denver,  
Colo. J. C. Mitchell, Cashier, Jul. 1, 1911.”

66 “HYDRO-ELECTRIC COMPANY.

~~Not negotiable.~~

70 Bodie, California, 6-30-1911.

Pay to the Order of Lee Campbell.....\$9.00

Nine and no/100.....Dollars.

Account of Wonder Sub Equipment 2½ days @  
4.00—To and including 6/30/11.

HYDRO-ELECTRIC COMPANY,

By R. H. HALPENNY.

To HYDRO-ELECTRIC COMPANY,

Bodie, Cal.

(Stamped) PAID Jul. 12, 1911.

[Endorsed]: Lee Campbell. C. L. Benadum.  
Pay to the order of Nixon National Bank, Reno,  
Nevada, Churchill County Bank, Fallon, Ne-  
67 vada. Pay to the order of any Bank or  
Banker. The Nixon National Bank, Reno,  
Nevada.”

**[Testimony of R. H. Halpenny, for Plaintiff.]**

Mr. R. H. HALPENNY, a witness produced on  
behalf of plaintiff, being first duly sworn, testified as  
follows:

Direct Examination by Mr. GEDNEY.

I am not in the employ of the Pacific Power Com-  
pany at the present time. I was in the employ of  
the Pacific Power Company on the 18th day of July,  
1911. At that time I was in Wonder, Nevada,  
68 at about half past ten o'clock on the 18th  
of July, 1911, at the terminus of the line at



(Testimony of R. H. Halpenny.)

Wonder. I knew the voltage the line was carrying. There was a slight difference in the amount of voltage between Wonder and Fairview. The Wonder and Fairview substations were fed off the same main line.

Mr. GEDNEY.—Q. Now, what was the voltage at about half past ten o'clock on the line at Wonder, as shown by the volt-meter there?

Mr. CANNON.—Objected to on the ground that it is incompetent, irrelevant and immaterial, because the controlling [241] thing in this case is the voltage on this particular live wire on the arrester; and we contend there is a vital difference from  
69 the voltage at Wonder and on the main line.

Mr. GEDNEY.—They can show the difference.

Mr. CANNON.—I think they ought to show the voltage at that particular place.

Mr. CURLER.—We cannot show it all at once; that depends on the voltage on the main wire.

The COURT.—You may ask the question. I presume you will follow it up?

Mr. GEDNEY.—Yes.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 15.**

70 A. Approximately fifty-five thousand volts between wires.

WITNESS.—(Continuing.) There would be more or less voltage on the wire at the Fairview substation,

(Testimony of R. H. Halpenny.)

probably a small percentage less at Fairview. It is so small that you would hardly consider it; you could consider it at that distance between stations, at the same amount.

Mr. GEDNEY.—Q. If the volt-meter at Wonder showed fifty-five thousand volts, the volt-meter at Fairview would show practically the same voltage?

Mr. CANNON.—I object to that on the ground no foundation has been laid for the question. If  
71 counsel will concede that Mr. Halpenny is an expert on this subject, I will withdraw my objection; otherwise I think they should prove that he is an expert.

Mr. GEDNEY.—I hardly think that is a question for an expert.

Mr. CANNON.—It is a pure matter of opinion, that can only be answered by an expert. [242]

The COURT.—Read the question.

(The reporter reads the question.)

The COURT.—Well, if he says he knows, I will allow him to answer it.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 16.**

72 The WITNESS.—You understand this would not be read directly fifty-five thousand, the meter would not indicate that; but you would have to take account of the transformer ratios between the one hundred and ten volts which the meter would indicate and the potential on the line.



(Testimony of R. H. Halpenny.)

Considering that is understood, the meters would indicate very nearly the same.

WITNESS.—(Continuing.) There was a meter in the Fairview station on the 18th of July, 1911.

The station was kept locked and Mr. Perrin  
73 was supposed to look after the station when anybody would go over there, in so far as

reading the meters was concerned. The volt-meter at about this time showed fifty-five thousand. That volt-meter is not on the main line of wire. There are two transformers between that and the line; there are two transformers between that and the line; there is first the power transformers, which you can hear; then there is an instrument, a potential transformer it is known as, with a further reduction which brings it down to practically a hundred and  
74 ten volts at the instrument. At Wonder, the in-

strument reading of the volt-meter was a hundred and ten. When the instrument read one hundred and ten the voltage on the main line at that point was about fifty-five thousand volts—fifty-four or fifty thousand. I am acquainted with the equipment in the company's substation at Fairview, and was acquainted in a general way with the electrical appliances, meters and so forth in the Mining Company's [243] substation at Fairview. The volt-meter at that Mining Company's substation was attached much in the same way, but perhaps had a different ratio. If I knew the reading of the volt-meter at the Mining Company's plant, I would be

(Testimony of R. H. Halpenny.)

safe in saying I could tell the voltage on the  
75 main line at that point within a few per cent.

The voltage upon the wires just outside the Pacific Power Company's substation at that time, between wires, would be about fifty-five thousand. That is what is known as a grounded neutral system. If there were fifty-five thousand volts between wires, the voltage between one of those wires and the ground would be somewhere in the neighborhood of between thirty-one and thirty-two thousand, that is, figuring the neutral is grounded.

Cross-examination by Mr. CANNON.

76 If this particular wire were grounded, the voltage from that particular point to the ground would be between thirty-one and thirty-two thousand volts.

Redirect Examination by Mr. GEDNEY.

Following along the wires as electricity would go, I think it is somewhere in the neighborhood of twelve or thirteen miles from Fairview to Wonder. Wonder is furthest from the Power Plant than Fairview.

**[Testimony of J. G. Scrugham, for Plaintiff.]**

Mr. J. G. SCRUGHAM produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct Examination by Mr. CURLER.

My name is J. G. Scrugham. I am an electrical engineer and professor of electrical engineering in the State University. I have been engaged as an instructor of electricity in the  
77



(Testimony of J. G. Scrugham.)

university since 1903. I as a student of electrical engineering in the State University of Kentucky, 1896 to 1900; graduate student in electrical engineering in the University of Michigan in 1901; electrician's helper for short periods [244] of time, and electrician and wireman for Cincinnati, New Orleans and Texas Pacific Railway in 1899; Craighead Engineering Company, Cincinnati, 1900; Metropolitan Elevated Railroad of Chicago in 1902; member of the International Electrical Congress in 1904; for the last ten years technical expert for a number of companies—Elko-Lamoille Power Company, Reno Power, Light & Water Company, Reno Traction Company, Southern Pacific Company, Truckee River General Electrical Company, Oregon Short Line Railroad Company, and a number of others. I have served as chief engineer in charge of design and construction on a high tension power line for the Elko-Lamoille Power Company the last two years. I have been frequently retained at different times as expert on different matters usually pertaining to high tension construction. If the Pacific Power Company was carrying fifty-five thousand volts of electricity, I would say it was a high tension power line. Anything over five hundred and fifty volts is considered a high tension power line. We would call this, perhaps, an extra high tension line. The usual and ordinary practice in high tension construction with reference to the height that the live ends connected with that construction are from the ground should be well out of

(Testimony of J. G. Scrugham.)

reach of a man working underneath it, that would  
be ten feet, approximately. The usual prac-  
80 tice is to have it—a sixty thousand volt line,  
approximately is about four-foot clearance.

If the amount of voltage between two of the high  
tension wires of the Pacific Power line on July 18th,  
1911, was approximately fifty-five thousand volts, if  
the system were a ground neutral system, as de-  
scribed by Mr. Halpenny, there would be approx-  
imately thirty-two or thirty-three thousand volts.  
The voltage on a line is the pressure, the electricity  
corresponding to the pressure of a water pipe line or  
head of water. The amperes is the electrical current

flowing in the line, corresponding [245] to  
81 cubic feet of water per second, or gallons of  
water per second. Electricity would jump,  
say from a point on the live arm of the arrester, No.  
1, to a person, under normal conditions, on a line  
carrying fifty-five thousand volts, if it is a grounded  
neutral, the same condition as prevailed on the  
Pacific Power Company line, it would jump about an  
inch and three quarters under normal conditions.  
From this point (indicating on model) the amount  
of voltage between that and the ground would be  
from thirty-two to thirty-three thousand volts.

82 This inch and three quarters is based on a  
voltage not of fifty-five thousand, but of  
thirty-three thousand volts between that point on the  
arrester and the ground. I am familiar with light-  
ning-arresters. I have measured this model. I am  
familiar with what is known as the horn type



(Testimony of J. G. Scrugham.)

arrester. Nearly all of the lightning arresters are based more or less on the horn gap principle; at least a large part of them in use in the west. We use something similar in the Elka plant; something similar in use in the Truckee River plant, may  
83 not be the same in form, but some qualification of the horn gap, that is, on the high tension side. I have seen almost exactly this arrester at Tonopah. The usual and customary height that the live arms of the arrester are put from the ground is at least nine or ten feet. They are put that height from the ground for the purpose of safety to human life.

Mr. CURLER.—Q. Basing your answer upon your technical knowledge and experience, state whether or not a lightning-arrester, with the live arm of the lightning-arrester within five feet nine inches of the ground, is a safe construction.

84 Mr. CANNON.—Objected to on the ground it is incompetent, irrelevant and immaterial, and no foundation laid for the question; not a proper subject of expert testimony, [246] and outside of the issues of the case; that the question as to whether this is a defective construction, or otherwise, is a false quantity in this case; and the question as to whether or not it is a defective construction, or otherwise, is not involved in this case, because, under the admitted facts of the case, the plaintiff was not work-  
85 ing with or operating this arrester, in the same way as he would be operating any piece of machinery or mechanical appliance; and

(Testimony of J. G. Scrugham.)

that the questions to be determined in this case must revolve around this proposition; not whether this lightning-arrester was put too high or too low, but as to whether the place which the plaintiff was put to work was a reasonably safe place, considering the natural dangers incident to his employment and his experience. And that whether the construction was or was not placed too high or too low, as per the practice of placing lightning-arresters, is an absolutely false quantity, because we are controlled  
86 in this case by the physical situation existing, whether proper or improper, when the plaintiff was put to work.

The COURT.—The objection will be overruled.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 17.**

A. I do not regard it as a safe construction.

Mr. CURLER.—Q. If the dead ends of the lightning-arrester were connected, as shown upon this construction, and the ground wire passed  
87 along a trench of the building, and passed out over a ground wire, and into a shaft, if a person came in contact with the dead arm of that arrester, or in contact with the ground wire, and a surge occurred upon the line sufficient to form an arc between the live and dead sides of the lightning-arrester, what would be the result to the man?



(Testimony of J. G. Scrugham.)

A. He would probably be severely injured; but it would depend on the efficiency of the ground; it is very difficult to obtain a thorough ground in this location.

Q. Will you just explain that, Professor?

88       A. Yes, sir. We have two paths for the current to go to the ground; one is through the ground wire, one is through the man's body. If there is any obstruction or impedance to the passage of the current to the ground wire; that is, any appreciable obstruction, it would depend on the efficiency of the ground; a portion of that will take the path through the man's body, probably injuring him very severely, even killing him.

WITNESS.—(Continuing.) A surge is a term used to describe an abnormal voltage on a high tension power line; that is, in this application, causing  
89       voltages beyond normal, and may be caused by a variety of reasons. If the line is carrying a very heavy current and the current is suddenly broken, a surge will result. If the wire were suddenly broken it would probably have the same result. If the arc across the lightning-arrester should smash the insulator, or be maintained, we might have a resulting surge. A lightning discharge might set up oscillations, resulting in a surge. We might have the phenomena of resonance taking place; that is a characteristic which depends on the construction of the line, length of the line, and capacity, and so forth. If there were several sub-

(Testimony of J. G. Scrugham.)

90 stations on a line, and the line was engaged  
in furnishing power for the different sub-  
stations, and the power were suddenly thrown off at  
one substation, we would have to have the load on the  
substation; assume a heavy current—probably have  
some resulting surge. I have examined the plaintiff  
in this case to determine the character of the burns  
he received. I observed scars upon the plaintiff.  
I have had no prior experience in directly examining  
scars from electrical burns. [248] We have two  
kinds of discharge; one is what we might term the  
static discharge, which the lightning-arrester  
91 is designed to relieve; then there is the  
dynamic current, or power current, which is  
on the line, and the lightning-arrester should hold  
that back. We have two kinds of discharges; static  
discharge, which the lightning-arrester is primarily  
designed to relieve.

Mr. CURLER.—Q. Assuming that the lines were  
carrying fifty-five thousand volts of electricity, as be-  
tween two of the lines, and the voltage between the  
live end of the lightning-arrester and the ground, was  
thirty-two to thirty-three thousand volts, how near  
to the live arm of the lightning-arrester would  
92 a person have to come before he would receive  
a discharge?

A. Under normal conditions approximately an  
inch and three-quarters, under abnormal conditions,  
it might jump two, three or four inches, and so forth.

Q. What do you mean by abnormal conditions?



(Testimony of J. G. Scrugham.)

A. A voltage higher than normal between the line and the ground.

Mr. CANNON.—I move to strike out the answer as to any other distance than one and three-quarters inches, on the ground there is no testimony here as to abnormal conditions.

93 Mr. CURLER.—Not at the present time, if your Honor please, that may be true; but as to whether there was an abnormal condition or not may be deduced from other testimony that will be presented in this case.

Mr. CANNON.—It is outside of the issues.

The COURT.—I will allow it to stand.

Mr. CANNON.—We note an exception.

The action of the Court in refusing to strike out said answer as requested is here assigned as

**Error No. 18. [249]**

A. That discharge I spoke of would be called an electrical discharge from the line to the ground.

94 WITNESS.—(Continuing.) An arc is an effect of an electric current passing between two bodies or electrodes; the visible effect is a highly superheated vapor, caused by the passage of the electric current. For example, an arc between two carbon electrodes is the incandescent carbon vapor, the carbon being heated to incandescence by the passage of the electric current. An arc between two copper wires would be a mixture of red hot air and copper vapor heated by the passage of the electric current. If there were an arc between the line

(Testimony of J. G. Scrugham.)

and a person, the arc would be the highly heated air or metallic vapor, mostly air, caused by the passage of electric current between the two bodies.

95 The brush discharge is a discharge of small quantities of electricity into the atmosphere from the conducting body, occurring under conditions of high electrical pressure; so called from the brush appearance of the object from which a discharge is taking place.

Mr. CURLER.—Q. Professor, will you illustrate by drawing the two, a brush discharge and an arc?

A. Shall I use the board?

Q. Yes, you may use the board, showing the difference between the two.

A. I am not much of an artist. (Draws on blackboard.) Assume a metal ball connected with  
96 a source of high pressure electricity—we will say extra high pressure; we would have emanating from that fine zigzag lines, very fine (illustrating). Now, if I should bring another metallic ball connected to the opposite terminal, and establish a flow of current of considerable amperage (illustrating on blackboard), we would have a solid mass of flame, due to the heated air and metallic vapor; [250] this would constantly rise. That is about as good a definition as we can give—we can take the two terminals of an arc lamp.

Q. This on the left is the arc, and the other you designate as the brush? A. Yes.

97 Mr. CANNON.—I don't get yet what is the difference between the brush and the arc.



(Testimony of J. G. Scrugham.)

A. Essentially, the brush discharge is very high voltage and very little current; it is under such extremely high pressure it is forced off of the conductor in very small quantities; while the arc is one solid flow.

WITNESS.—(Continuing.) The exact type of horn arrester—not construction but type—is only found on two lines that I know of; that is the Pacific Power lines and the Nevada-California lines;  
98 called, I think, the Poole type, designed by Mr. Poole, that is my understanding. I have seen a very similar arrester to that at Tonopah. The height of the live wires of the one in Tonopah, I should say, is at least ten feet, it was well within the reach of a man.

Mr. CURLER.—Q. Professor, I show you a picture, have you seen that picture before? (Handing Foster's Electrical Engineer's Pocketbook to witness.) A. Yes, sir.

Q. What is that a picture of?

A. The detailed construction of the horn type arrester used by the American River Electric Company.

Q. Suppose that Mr. Sheaff received eight  
99 electrical burns on the left shoulder, and three electrical burns, one on the top of the right shoulder, and two below that on the back, from one discharge, in your opinion how would you account for those several burns?

Mr. CANNON.—Objected to on the ground it is incompetent, irrelevant and immaterial; no foundation

(Testimony of J. G. Scrugham.)

laid for [251] the question; it is entirely speculative, and not the subject of expert testimony; the witness has not qualified as an expert on that subject. And, furthermore, that it assumes that the plaintiff's electrical burns were received with one contact, or at the same time.

100 The COURT.—Is that how he would account for the number of burns?

Mr. CURLER.—That is it. How would he account for the number of burns, based upon his knowledge of electricity?

Mr. CANNON.—I would like to add to my objection, there is no testimony here that there were eight electrical burns on the left shoulder, or any testimony showing the number of burns any place on his shoulder or back.

Mr. CURLER.—As I have stated before, your Honor, that is admitted by the pleadings in this case.

Mr. CANNON.—I don't think so.

101 Mr. CURLER.—There is a specific allegation to that effect; and the defendant in this case says it don't know anything about it.

Mr. CANNON.—The denial is the usual denial, where there is not sufficient information or belief on the subject to enable to defendant to answer; and basing it on that fact, and on that ground, it denies the allegation of the complaint—denies anything about the details of the injuries.

(Argument.)

The COURT.—I will allow the question.

Mr. CANNON.—We note an exception.



(Testimony of J. G. Scrugham.)

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 19.**

102 Mr. CURLER.—I will modify that question.

I said at the same time, I mean at this one occurrence. [252]

Mr. CANNON.—Let the objection be considered as being made to the question as amended.

The WITNESS.—The number of burns was probably due to his falling—different surfaces of his body presented different points; the easiest path for the arc to travel through his body to the ground. We take two carbon points, two wires with an arc passing between them; that arc does not remain constant in one place, it travels unusually upward; or  
103 if there is a wind blowing, it may travel in various directions, depending on the air currents.

WITNESS.—(Continuing.) If an arc were formed between the live end of a lightning-arrester and a person's body, the body being clothed, it would undoubtedly burn the clothing.

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

Transcript of Record.  
(IN TWO VOLUMES.)

---

PACIFIC POWER COMPANY, a Corporation,  
Plaintiff in Error,  
vs.  
P. R. SHEAFF,  
Defendant in Error.

---

VOLUME II.  
(Pages 305 to 607, Inclusive.)

---

Upon Writ of Error to the United States District  
Court of the District of Nevada.

---

Filed

JUL 4 - 1915

F. D. Monahan,





No. 2603

---

**United States**  
**Circuit Court of Appeals**

**For the Ninth Circuit.**

---

**Transcript of Record.**

**(IN TWO VOLUMES.)**

---

PACIFIC POWER COMPANY, a Corporation,  
Plaintiff in Error,  
vs.

P. R. SHEAFF,  
Defendant in Error.

---

**VOLUME II.**  
**(Pages 305 to 607, Inclusive.)**

---

Upon Writ of Error to the United States District  
Court of the District of Nevada.

---





(Testimony of J. G. Scrugham.)

Cross-examination by Mr. CANNON.

When I say that the different burns spoken of may have been received by the plaintiff in the act of falling, or while falling, that is a mere conjecture on my part. I had in mind that if, for instance, the

104 plaintiff was in a position where he would receive a charge of electricity from this wire,

either by jumping or by actual contact, that in falling the arc might be placed upon different parts of his body, such as would be presented in the proper relation while he was in the process of falling. The arc may be formed by actual contact and a

drawing away again. In an ordinary automobile engine we have what is known as a "jump spark."

In the spark plug, the two ends come close together, say a thirty-second of an inch apart, and the spark

105 which explodes the charge of gasoline jumps across that space. There is another character

of spark used in gasoline engines called the "make and break spark." That spark is formed by

the two metals being together in the first place; then the current is turned on, and then one part of the metal draws away from the other, and in the drawing away process the spark is formed. [253] The same

way as when disconnecting these wires and raising the switch, as the switch was just opening and drawing away, there would be a spark there.

105 There would be an arc if sufficient current is behind it to keep it working, that is why we see in opening ordinary electric light switches, that little flash as the metals are parting company, and



(Testimony of J. G. Scrugham.)

also see it as they are coming together sometimes. Applying that principle to the case in hand, and assuming that a person came in contact with the point of the wire or pipe in question, and then either fell away or drew away, that arc would be formed on the same principle as the make and break spark. After the voltage reaches a certain amount, a distance of a fraction of an inch makes very little difference. In either case there would be the arc, fire and burning resulting. That might have the effect of leaving its mark on the wire in either instance. In the case of either the jump or actual contact and drawing away that arc would present practically the same appearance in either instance. The clothing of a person under those circumstances coming either within the jumping zone or the actual contact would probably cause a spreading of the arc, particularly if he had very moist clothing, either perspiration or otherwise; or if he had large metallic buckles on his back in suspenders, and that spreading would be practically the same, whether it was a contact case or a jump case. If a person, for instance, came into actual contact with that wire at a point in his back to the right of the spinal column and under the right shoulder blade, practically at that point, and there received his first burn; and in dropping were to fall somewhat in the manner you are indicating, so that the wire would run up along the back, and to the shoulder, it might produce the effect that was described by me by counsel in his question, as

(Testimony of J. G. Scrugham.)

to the several different [254] electrical burns. In that process, providing that the arc continued, or that different arcs formed at different points, while the point was traveling along that portion of the person's body. If the voltage between the line and the ground was thirty-two or thirty-three thousand volts, no lightning discharge, or no abnormal lightning conditions being present, there would be a normal condition. The distance that I have mentioned of the jump of about one and three-quarters inches

has been worked out experimentally, and those  
109 experiments were supposed to be conducted along scientific lines. I had occasion on an electrocution case some years ago to build an apparatus largely for the purpose of determining these points, and my results agreed with the scientific conclusions on the subject very closely. The results given in the handbooks are based on needle points. This result I have given you now is the result based both on the result given in the handbook and my own experiments. The point I am making, it may be between needle points, and between blunt points, simply the distance; but in order to get it ex-  
110 actly, to get a standard, you must have a standard point, otherwise there would be a slight variation. A standard point in the case mentioned would be a needle point. Those tests are made under conditions that represent the best possible conductors to get the longest jump. This figure that I have given is the outside limit. It may vary the sixteenth of an inch, or even an eighth of an inch



(Testimony of J. G. Scrugham.)

from that. The human body with respect to high voltage is a good conductor because the high voltage has to go somewhere. The skin you might say offers a comparatively high resistance; the salt water  
111 in the blood offers a very low resistance; the nervous system—the nerves, offer a very low resistance; if it once gets under the skin, gets to the internal portions of the body, and the nervous [255] system and the blood system, there is a comparatively low resistance. A low voltage will not break down this cutaneous tissue, and consequently it has comparatively a high resistance; a high voltage will break it down, and once broken down, the resistance is comparatively low. An insulator is good  
112 as long as it is not broken down. You cannot state anything positive about it, because it depends on the condition of the man's skin at the time; if he is wet with perspiration, it is a pretty fair conductor—if he is soaking wet; if he is very dry, why, of course, it is a much poorer conductor. We have experimented with it, having a man's hand in salt water—a good conductor. With a point on the one side, and a rounded surface, or a circular surface, like some parts of the human body, on the other, the tendency would be to require a smaller distance for the jump. Some part of the human body would  
113 have to come within an inch and three-quarters of that wire before the person would be hurt, under normal conditions on that line. The jumping distance increases very rapidly with the vol-

(Testimony of J. G. Scrugham.)

tage; by that I mean if you double the voltage after thirty-thousand you would get much more than twice the jumping distance. If a person were standing on dry ground that would tend to decrease the amount of current which would pass. In lightning-arresters there is supposed to be resistance in the grounding process. A lightning-arrester performed  
114 two offices, one to carry off the surplus that was not intended to be carried on the line, and the other is to keep on the line what was actually intended to be there. Assuming that the distance between the horns of this lightning-arrester was four inches and a quarter, if a body were within exactly four inches and a quarter from the live wire, and there should be an overcharge for any reason upon the wire, it would probably, almost undoubtedly, choose the regular route. If the human [256]  
body were four and a half inches from any part  
115 of this live wire, the jump would be across instead of into the human body, so under those conditions some portion of the human body would have to be within less than four and a half inches from the live wire, before it would receive any charge, under the conditions that have been described to me, even if there were an overload on the wire. Any part of his body, or whatever he may have had in his hands, or a ring upon his finger, or anything  
of that kind, would have to get within that  
116 gap zone there before he would receive a charge, even under abnormal conditions, other than a direct stroke of lightning which might take



(Testimony of J. G. Scrugham.)

*take* both paths. In case of a stroke of lightning that would practically have to occur right at the point. If such a stroke of lightning occurred to do as much damage as that a quarter of a mile away, it would probably break the insulators, and go to the ground by means of *of* the poles and smash the poles. The lightning expected to be controlled by this lightning-arrester is more or less static. It is not a  
117 lightning bolt, it is the lightning with which the air is charged by reason of an electrical storm, or something of that kind. These abnormal conditions I speak of would have to be such as to increase the voltage to such an extent as to cause the arc to jump across this four and a quarter inch space before it would be relieved, and then when it would jump, an arc would be formed there. Assuming a sufficiently heavy load to form an arc, that arc,  
118 if it were permitted to remain there, would be fed and supported by the current on the line, and that would carry the current which was being generated in that power plant, into the ground, and cause all sorts of conditions in the power plant and on the line. In order to avoid any such contingency as that, and to protect and conserve the power on the line for the purposes for which it is intended, a certain amount of resistance is arranged for in the path of [257] this surplus current to the earth. By resistance is meant some sort of obstruction to the lighting itself, and holding it back,

(Testimony of J. G. Scrugham.)

to limit the flow of dynamic current, or line  
119 current to the ground. The limitation of that  
flow, that partial resistance, has a tendency  
itself to assist in the breaking of this arc, and to re-  
turn things to their normal condition. In this pic-  
ture, which has been shown me here, there is provided  
a tank of some kind where the surplus charge comes  
down into a tank of water, and from that tank, the  
current is carried into the ground; the water in that  
case supplies the resistance and helps to break the  
arc. Now, in the assumed case here, where condi-  
tions are a little more rough, and where ex-  
120 pedients have to be used sometimes, the carry-  
ing of that wire to the water in a well or in a  
shaft, might have an influence along the same line  
to a very limited extent. The arc would have an-  
other reason for breaking under a construction of  
this kind. Assuming that an arc formed between the  
two closest points, it would gradually become elon-  
gated and attenuated, and would finally, in the pro-  
cess of rising due to the heated air, come to a point  
where it would break. It was just as you  
121 illustrated to Mr. Campbell this morning, you  
stretch a rubber band out beyond its capacity,  
it would break, and when that arc would break, the  
normal condition would be restored and the power  
would flow along the line for use. Some modification  
of that horn gap type of arrester has been in use for  
some years; most of these in the west, on the Pacific  
Coast work on practically the same principle. They  
use this method of extinguishing the arc. Some-



(Testimony of J. G. Scrugham.)

times there are different gaps, and sometimes there is a succession of gaps, and the lightning-arresters differ in those details, but the same general principles, as to the jump and resistance, are carried in practically all of these forms. I have been familiar with the horn gap type of [258] lightning-arrester for several years past.

Mr. CANNON.—Q. Invented by a German named Oelschlager? A. Yes.

Q. This is the fact concerning it, isn't it? It has been used little in this country until lately, when it has been installed on a few of the high voltage lines on the Pacific Coast, and the results are so far highly commendable; would that be about right?

A. Approximately for the time that was written; that was written about 1906, or 1907, or 1908. (Referring to Foster's Electrical Engineer's Pocketbook.)

Q. This was revised and published in 1913.

A. Well, the same thing I think appears in the 1904 and 1905 edition.

WITNESS.—(Continuing.) On this particular picture that was shown me, the high tension wire was not necessarily brought down, it may be brought up, and there is nothing directly in this particular picture as to whether it was built high above the ground, or close to the ground.

124 A. In scale and relative proportion; by scaling, that is, so many inches to the foot, I am judging by the diagonal brace, the customary location of the diagonal brace.

(Testimony of J. G. Scrugham.)

Q. This would indicate, would it not, with this word "Ground," that the ground would be immediately below the tank?

A. No, sir; by "ground" there is meant a ground wire.

Q. And that ground wire could either stop there, or continue on down as far as the pole went, whether it was a hundred feet or twenty feet? A. Yes, sir.

Q. And the pole is not shown on this, except  
125 a very small portion? A. No, sir.

Q. Now, you spoke of the reason for carrying that at [259] a height of ten feet, so that the element of safety came in? A. Yes, sir.

Q. A man's safety—safety to the public, I suppose? A. No, sir.

Q. Safety to anybody— A. Working around it.

Q. Safety to anybody. Now, then, the safety of the public, of course, would come in as an element?

A. Yes, sir.

Q. Then a fence would help some?

A. Yes, sir; the higher and more substantial the fence, the better it would be.

125 Q. A fence ten feet high, of course, that would be a better protection than a low fence?

A. To the public.

Q. To the public—I am considering now to the public. The more substantial the fence the better, so far as the public is concerned? A. Yes, sir.

Q. And danger signs also constitute some protection? A. Yes.

Q. Not only so far as the public is concerned, but



(Testimony of J. G. Scrugham.)

to people working about the apparatus; that is correct, isn't it?      A. Yes, sir.

WITNESS.—(Continuing.) With people having to work around these things, they have some times to climb poles. Assuming that a lightning-  
126 arrester of this kind were put on a ten-foot pole, and that a person had to do some work in connection with the wires, or the insulators, he would have really a more insecure position in working upon it than if he were standing upon the ground and working on it. In other words, if you have a dangerous thing to work with, and you are standing on the ground working about it, you are in a more secure position than if you have to stand upon the  
127 pole that is quite a number [260] of feet in the air, and hold yourself by straps around your legs. So far as the public is concerned, a fence is a good thing. So far as the public is concerned, a danger sign is a good thing. So far as an employee is concerned, a danger sign is a good thing, and so far as an employee is concerned, a safe place to stand while you are working is a good thing. These currents that are carried on high tension wires are all alternating currents, with one exception, there is a line in France, a direct current line, that runs  
128 ninety thousand volts. I spoke of another manner of wrecking a wire by a sudden stoppage in the use of the current at some point; that is provided against by gradually reducing the load. If a current is being used in a mill, and they want to shut down the mill, they have a switch which is so

(Testimony of J. G. Scrugham.)

arranged as to reduce the load somewhat gradually; they use an oil switch. If the load is shut off suddenly, the effect would be to sort of instantaneously dam up the current on the wire for a time. I can give you a hydraulic analogy that will make that clear. We have a good-sized pipe with a considerable head of water flowing in it; the water has a certain momentum; if we suddenly shut off that water, there will be a very abnormal surge, you might call it, corresponding to it—bursting pressure, which may burst the pipe. We have a somewhat similar condition in electricity; it may burst the insulator, unless there is something on the wire to relieve it. The analogy between voltage, on the one hand, as compared with the pressure of water and amperage on the other hand, is the following; a pipe line leading from a high tank, the pipe line being at the bottom of the tank; if the tank is a hundred feet high, we say we have a hundred-foot pressure or head on that water. Now, the electric line, the difference between two wires, can be likened to the difference between the top and bottom of the tank; there is a [261] pressure of one hundred and ten volts, or twenty thousand or fifty thousand, between the two wires, corresponding to the difference in elevation, we will say of two or three hundred feet on the tank; in other words, the voltage pressure, voltage electrical pressure, corresponds to the head in feet pressure on a water line. Now, the term “amperes” implies a certain quantity of water per second, or, the analogy,



(Testimony of J. G. Scrugham.)

so many second feet, or so many miner's inches, or so many gallons per second, or per minute; that is the analogy for the amperes. If the high tension wires are carrying a high voltage current into the transformers, when that current passes through the transformers, the voltage is usually reduced at  
132 the receiving or consuming end, for the purpose of working. It may be reduced from fifty-five thousand to sixty-six hundred, and then again, it may be transformed again down to one hundred or something of that kind.

Redirect Examination by Mr. CURLER.

The liability to be electrocuted is reduced as the voltage is reduced through the transformers, approximately, at least. If a man gets two thousand volts, it is just as bad for him, really, as if he got sixty thousand, one would kill just as dead as the other. When through the transformer the voltage is reduced to one hundred and ten volts, it is  
133 not commonly considered dangerous, although there are well authenticated cases where men have died from the effects of a one hundred and ten volt shock, possibly due to heart failure. I have seen twenty-three thousand volts draw an arc about seven feet. It depends on conditions at the time. Thirty-three thousand volts could be drawn even longer. The arc is caused by the current heating the air or vapor to incandescence. A perfectly dry pole would be an insulator up to a certain voltage applied to it, and depending on the length

(Testimony of J. G. Scrugham.)

134 [262] of the pole. To explain,—a man  
working on a pole, two thousand volts, the pole  
perfectly dry, the pole is a good insulator; if he is  
working on a pole say of a hundred and fifty thou-  
sand volts, or possibly higher, he should not rely on  
the pole as an insulator; the pressure is possibly  
sufficiently high to break down the insulation on the  
pole. It would be safer from electrical shock to work  
on a lightning-arrester say, twelve or fourteen feet  
from the ground, having no other insulation  
135 than the pole, than it would be on a lightning-  
arrester with no insulation between you and  
the ground. The wire would not be grounded if it  
were cut off square in the air as that picture appears  
(the witness refers to a book handed him by counsel).  
Supposing this lightning-arrester were constructed,  
and there was no connection made between the dead  
ends of the lightning-arrester and the ground, there  
would probably not be an arc formed between the two  
horns of the lightning-arrester, unless that happened  
to be the weakest point in the line. If a surge oc-  
curred upon the line, but not of sufficient force  
136 to form an arc between the live and dead ends  
of the lightning-arrester, just insufficient to  
not form the arc, and a person came close to the live  
end of that arrester, the electricity would jump a  
space to him, just slightly less than the space between  
the arms. I think a voltage of from fifty-five thou-  
sand to sixty-five thousand volts, probably approxi-  
mately fifty-six thousand volts, is necessary to form  
an arc over a space of four and a quarter inches. A



(Testimony of J. G. Scrugham.)

perfect ground is a ground of infinitely low re-  
137 sistence. The ground that has been described  
in this case would not be a perfect ground. It  
was probably the best they could do under the cir-  
cumstances. The length of the ground wire to the  
shaft would make a difference. The discharge from  
lightning is highly oscillatory, vibrates many thou-  
sand times per second; it will take a short [263]  
path and high resistance, in preference to a long  
path, a very long path, of low resistance. The skin  
does not offer any considerable resistance to high  
voltage. Clothing under certain conditions might  
spread the burning. The clothing would be  
138 ignited at the point where the arc struck; it  
would heat the air around it, making the air a  
fairly good conductor—cause the arc to spread.

Recross-examination by Mr. CANNON.

There might be electrocution with considerably less  
than two thousand volts. There have been well au-  
thenticated instances of men dying after a one hun-  
dred and ten volt shock. It is considered anything  
over one-tenth of an ampere of current is likely to  
prove fatal. In the electrocution of criminals, a  
voltage of about seventeen or eighteen hundred is  
used, but a comparatively high amperage. For in-  
stance, with a very quick connection being  
139 made, with a low voltage, disconnected im-  
mediately, there is not near as much likelihood  
of damage, as if the connection is made and retained,  
allowing the current to pass through. On an  
ordinary automobile, with the ordinary magneto, a

(Testimony of J. G. Scrugham.)

very high voltage can be generated. I do not think you can generate over ten thousand volts on an automobile magneto. The chances are it would be much lower. In that case there is no amperage, no quantity behind it to support it. If the object which comes into contact, or near the wire when the arc is formed,

140 ; moves away, there is a possibility of the arc being stretched out until it becomes so attenuated that it breaks. I didn't mean to be understood as saying that there was any possibility of an arc being formed at a distance of four or five feet under the conditions mentioned. On these high tension wires there is a possibility sometimes arising to a great danger of an insulator being broken by the power of the voltage. If [264] that insulator breaks, then the tremendous voltage finds its way down the pole, usually to the ground and it sometimes forms a charred track, which forms a fairly good conductor.

141 Mr. CANNON.—Q. So that if this contrivance were raised, so that a person would have to climb it to repair it, or to do anything with it, he would be under that danger, and all of the dangers that go with handling high tension wires, wouldn't he?

A. With the insulating platform which is frequently placed there, he would not be under any danger, because he would stand on the insulating platform; but if such an insulating platform were not provided, the answer would be yes.



(Testimony of J. G. Scrugham.)

Redirect Examination by Mr. CURLER.

WITNESS.—(Continuing.) The resist-  
142      ance of the skin is reduced by perspiration,  
            and allows an easier path for the current to go  
            through; more current can go through for the same  
            voltage, than if the skin were dry; he will receive a  
            more severe shock on, say one hundred and ten or two  
            hundred and twenty volt line, if his hands are moist  
            or wet, and particularly if it is salt water, he will feel  
            more of a shock, because more current would pass.  
            In perspiration there is salt water, and salt is  
            a good conductor. Absolutely pure water is not a  
            conductor, but water that is absolutely pure is  
143      almost impossible to find outside of a chem-  
            ical laboratory. A very slight impurity will  
            make the water a conductor.

**[Testimony of Clifton Herring, for Plaintiff.]**

Mr. CLIFTON HERRING, a witness produced  
on behalf of plaintiff, being first duly sworn, testified  
as follows:

Direct Examination by Mr. GEDNEY.

I am an electrical worker, residing at Rawhide at  
present. I know Mr. Sheaff. I met him in January,  
1911. I worked in practically the same gang with  
him. That was the time I was [265] working for  
the contractor, Mr. Hess. I was putting insulators  
            on poles, a transmission line from Lucky Boy  
144      to Wonder. He was working on the line gang  
            part of the time, bucking telephone wires. He  
            was working about three weeks at that. We worked

(Testimony of Clifton Herring.)

into Wonder together at that time. The gang was discharged there, and he left for Fallon. I next saw him in Wonder. He was helping with the substation installation, I think, for the Pacific Power Company. He was helping Mr. Halpenny. Mr. Halpenny was installing the substation at Wonder, and he came over there to assist. From that time on, up to the 18th of July, I was around where Mr. Sheaff was working, for a period of about two days.

145, Mr. CURLER.—Q. Does or does not a line-man furnish his own equipment or tools?

Mr. CANNON.—Objected to on the ground it is incompetent, irrelevant and immaterial; it does not involve any question of custom with this defendant; or as to whether it is an invariable matter, or whether a person can be a lineman without these or not.

The COURT.—I will allow the question. It don't seem to me it is very material.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

146

**Error No. 20.**

A. Usually he does.

WITNESS.—(Continuing.) Those consist of climbers, belt, tool-belt and safety, and usually pliers and connectors.

Mr. CURLER.—Q. Did Mr. Sheaff at any of the time that you knew him working for the Pacific Power Company, or any other company, have any of those tools? A. I don't know of such. [266]



(Testimony of Clifton Herring.)

WITNESS.—(Continuing.) I saw the lightning-arrester built. Mr. Halpenny, Mr. Campbell, Mr. Granquist, Mr. Sheaff, Mr. Cook, Mr. Greenleaf and myself worked on that lightning-arrester in building

it. I think it took about four or five hours to  
147 build it. It was constructed about June. We

began after dinner, I think, about two o'clock, and it was about six, I guess, or a little after, when we finished. Mr. Sheaff, in the construction of the lightning-arrester, helped in bringing some of the material from one part of the grounds to another, where it was to be used. I think Mr. Halpenny bent the pipes for the lightning-arrester. I don't think Mr. Sheaff helped Mr. Halpenny bend those pipes.

I helped him on some of them. I am not sure  
148 that I helped him on all of them. During the time we were building that lightning-arrester there was conversation between Mr. Halpenny, Mr. Greenleaf, Mr. Campbell and myself in regard to its construction, and more particularly in regard to the height. At that time we were tying on the horns.

Mr. CURLER.—Q. State that conversation, as near as you can remember it.

Mr. CANNON.—Objected to on the ground it is incompetent, irrelevant, immaterial and hearsay.

The COURT.—The objection will be overruled.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said  
149 question to be asked and answered is here assigned as

(Testimony of Clifton Herring.)

A. Mr. Campbell remarked that it was criminal carelessness to build an arrester with the horns so close to the ground, that the average man could easily come in contact with them; and Mr. Halpenny remarked that he felt it was not safe, but Mr. Poole had instructed him to go ahead and build an arrester  
150 with what material he had, and he had to protect the lines [267] from lightning, and as soon as he could get the other arrester there, it would be installed in its place.

WITNES.—(Continuing.) I remarked that it didn't look good to me, and Mr. Greenleaf remarked that it was a "cheap damn outfit," or "cheap damn outlay," and that some one would likely get hurt there. During that conversation, I think Mr. Sheaff and Mr. Cook were gathering up wire and other material not being used, and piling them along the side of the  
151 transformer house. Mr. Sheaff was around at the side or the front of the transformer house. and the conversation took place right at the lightning-arrester. Mr. Sheaff was working twenty or thirty feet from where I was at the time of this conversation. At the time of that conversation there was a telephone put into that transformer house. It was installed at the time, whether it had been put in that day or a day or two before, I don't remember. If you were in the house, you could not hear the buzzing or purring of the transformers in the station-  
152 house that day. If the power was turned on, usually there is a slight buzzing, purring noise. I don't remember hearing any buzzing of the tele-



(Testimony of Clifton Herring.)

phone. The telephone was attached to the framework of the building. It was an iron-covered building. On the 18th day of July, 1911, the day the injury occurred to Mr. Sheaff, I was at Fairview. I first saw him at that time about nine-thirty, and I afterwards saw him at the transformer station. I was talking with him about nine-thirty, or perhaps

a little later, the last time, and he left me to go  
153 to the transformer station. It was perhaps an hour before I saw him again. He was sitting on a transformer oil drum, in front of the transformer station. I would judge those drums were about forty-two inches long,—it was setting on end. A few minutes before I heard some one holler, but didn't recognize it until afterwards as being Mr. Sheaff. At the time [268] I heard that person holler, I didn't know where he was hollering from; I thought he was just over the Nevada Hills Mine dump. He was hollering "hey, there, hey,  
154 there, send somebody down here, will you?"

He was just simply sitting there on the oil tank. I came around the edge of the dump and saw him sitting on this drum, just this way (illustrating), with his head drawn over, looking back toward the dump, and I throwed up my hand as I passed along at him, like that (showing). He didn't answer me at all. When I saw him sitting on that oil tank, I think it was about ten or fifteen minutes past eleven. After that time, I saw him at the window of the transformer house. He hollered again from  
155 there. He hollered "hey." When I answered, he said, "Come over a minute, will

(Testimony of Clifton Herring.)

you? I have hurt my foot." I was eating my lunch—I dropped my bucket and ran over to him. When I got there, he was inside and crouched down with both feet in from of him on some burlap and tools and rubbish and stuff, under the window. As I got inside the door, I saw one shoe off, and the foot burned. It was the right foot. It was just a  
156 crisp blister, practically, from the bottom of the foot to the ankle. I didn't then examine him to see whether there were any further burns. When I saw the burn, I ran up on the hill and got assistance. When I came back there was quite a crowd came back and together we dressed the wounds, both feet and shoulders. After fixing that one foot up, we examined the other foot. It was burned too, and we dressed that. Both shoulders were burned,—the left shoulder, his shirt was burned out, a place perhaps as large as a saucer. I didn't notice  
157 any other burns. We put him on a cot and took him up the hill and started him for Fallon. At the time I went in to the substation house he seemed to be conscious, but dazed, and from that time on, and until I saw the last of him, he was not at any time fully conscious. I [269] went around to where the lightning-arrester was that day, after I knew that he was hurt; after getting assistance for him; after bandaging up the wounds, he said he had lost his watch up there, and I went up to look for it. I did not find it. I came out on the north side the door would then be opposite me. I went  
157 within that enclosure, climbed through a wire fence. I saw where he had been digging—



(Testimony of Clifton Herring.)

saw his tools there. I looked for the watch. At that time the fence was connected with the substation. I went back and told him I could not find the watch. I went back again to look for it. When I went back the next time, the fence was up. I tore it down then with my pliers to get inside. I don't

know whether I pulled the staples or cut the  
158 wire. I think it was a barbed wire fence. It

was a wire fence—strand fence—three wires, I think. I think the two top wires on the south side had been dropped down,—laid down. I that day looked at all of the horns. There was a little blister—a tit—just at the side, or below the side of the north horn, on the live side, marked on this model, horn No. 1. If that pencil was the arrester, that tit would be about here. Assuming this pointer is the live arm of the lightning-arrester, I think that tit would be about there. It was more on the side,

I think, than on the bottom. After I first  
159 got to this transformer station, I noticed this, perhaps twenty minutes after first going to

Mr. Sheaff. Just before I noticed this, while in there at this time, I first noticed this tit. I don't think there was anyone inside this enclosure with me at this time. I saw a pick and shovel in there at that time. The shovel was lying right beside the hole. It evidently was the last hole he had worked at. It

was this hole here (indicating on model).  
160 The hole marked "D." The shovel was lying right alongside the hole, right alongside this way (showing on model). On the inside of the hole,

(Testimony of Clifton Herring.)

lying [270] north and south. The pick was lying right across this way. The pick and shovel were lying close together near the hole. The ground inside that enclosure there was not smooth any place. It was the loose rock that had been thrown out at the time from the excavation from the transformer house; it was comparatively level back to the outside of the lightning-arrester, and beyond that, at the edge of the dump, it fell off more abruptly.

161 Q. What was the condition from the transformer house to the posts of the lightning-arrester?

A. The condition of the ground between the lightning-arrester and the switch posts was rocky. It sloped off. It was a step slope, I would say.

Cross-examination by Mr. CANNON.

When I went in there the second time, no one accompanied me inside the enclosure; some came around to the fence.

Mr. CANNON.—Q. Will you come down to this model, and tell us as nearly as you can, the route that you took in looking for that watch the first time?

162 A. (Going to model.) I came down here and got through the fence about here, I guess, and just walked along here, and looked from this end, under through the arrester.

WITNESS.—(Continuing.) I walked back and forth in the space between the lightning-arrester and the north side, looking along here, and also back through here. I went around and looked at the



(Testimony of Clifton Herring.)

other end. I walked around the building I went out again through the fence, and went clear around the building, and then went on the other side. I got over the lower wire, the top wires were down.

163 I traveled around the same way on that side, looking under the lightning-arrester. I looked all around it and under it and didn't find the watch. In looking under it, I stooped down from the point that I was [271] walking around. In looking for it the first time, I walked to the sloping ground. This corner down here sloped. I walked over past this hole marked "D," and then when I went around on the other side, I just went along the end of the arrester about four or five feet from it. I was as close as four or five feet from it on the north

164 side, I guess. I didn't find the watch then and came back a few minutes later to make a more particular search. I tore the wires down on the north side, and just searched the same ground. I did not walk any differently then than I did before. I think I went over about the same ground. I think I went to the other side again. I walked around the transformer house and on that side around the end of the arrester. I told him first that I

165 could not find the watch and he seemed sure that he had lost the watch in there somewhere.

I made the examination of all of the points or all of the pipes of the lightning-arrester the second time in there. I simply looked at them. I just stood *stood* here and looked to see if I could see any mark or any indication of an arc, or anything of any contact. I

(Testimony of Clifton Herring.)

think I first examined this one (indicating on model) that would be the dead one on the north side. I

166 didn't go up close to it. I stood perhaps three or four feet away from it. I next looked on through the line at this, the best I could.

That was the only examination I made of those other dead ones, looking four feet away at the first dead one. The size of this mark that I saw on No. 1 was a little larger than a pinhead. I was about three feet away from it when I discovered that. I did not put my face down very much closer to it than that to examine it carefully. I examined the one in the cen-

ter the *say* way. I stood on the outside and  
167 looked at it. I was perhaps eight or nine feet away from that one when I was examining it.

[272] I did not make a very close examination of a mark the size of a pinhead at that distance. I did not examine it very closely. I took a sort of general survey of them, and I saw something. I did not go any closer than three feet to any of those live wires in the two entrances that I made to that enclosure. While

I was making this examination, I think the  
168 spectators remained on the outside of the fence. The only place I noticed that was burned away was where the shirt of the plaintiff was burned. On the day this lightning-arrester was built I was not watching Mr. Sheaff particularly. I was not keeping my eyes on him to see whether he was within earshot or not. I was not modulating my voice when this conversation was going on so that Mr. Sheaff would not hear. I was paying very little



(Testimony of Clifton Herring.)

attention to Mr. Sheaff,—no more than to anybody  
else. Mr. Sheaff was coming and going with  
169 material, and I was paying no attention to his  
coming or his going. When this conversation  
occurred among the four of us, I didn't pay any particular attention as to who was present, or who was absent, except at that time we had the horns formed up, and were tying them in, and Mr. Sheaff and Mr. Cook, Mr. Granquist's helper, had been sent around to gather up other loose material, and stack that up, to get ready for leaving the job; we were just finishing up the job. I did not make any memorandum of  
this conversation. I did not pay any particular  
170 lar attention as to whether Mr. Sheaff was  
there or not. Everything spoken about was  
spoken openly, and in such tone of voice as the occasion happened to require. I have the idea that Mr. Sheaff was not around. I did not look behind me to see if Mr. Sheaff was behind me anywhere. I don't know if Mr. Sheaff was behind the building. He might have been off down the hill, but he wasn't in sight. If he had been with the rest of us, I certainly  
would have seen him. That was in June, 1911,—  
about [273] two and a half years ago. I  
171 cannot remember who was present at every  
conversation that I have had in the last two  
years and a half. At the time this conversation was  
had, Mr. Sheaff had not had any accident—about a  
month before the accident to Mr. Sheaff. There was  
no reason why I should keep Mr. Sheaff in mind at  
all at that time. I have not refreshed my memory

(Testimony of Clifton Herring.)

from time to time as to this conversation particularly, except as I might, feeling about the arrester  
at the time, and the later incident impressed  
172 it on my mind. I didn't then think back and  
say, now Sheaff wasn't there, or Sheaff was  
there, or who was there. Nobody has been talking  
to me about that feature of this matter. We talked  
it over with the attorneys about who was present at  
that conversation, or whether Mr. Sheaff was out of  
earshot. The attorneys asked me who was present  
at the time. They asked me whether Mr. Sheaff was  
about, whether Mr. Sheaff could hear the conversation,  
as to the danger of the lightning-arrester.

They didn't tell me it was a very important  
173 thing in their case that Sheaff did not hear  
that conversation. They did not tell me that  
if Sheaff had heard the conversation that it would  
go very hard with him in this case. They said nothing  
of that kind. At this late day, two years and a  
half, I can recall the particular persons that were  
present while a particular thing was being said.  
When I found Mr. Sheaff in the substation he answered  
when I spoke to him. He wasn't unconscious,  
but he was in a dazed condition, it seemed.

He remained in the substation over half an  
174 hour—three-quarters of an hour, or an hour,  
before he was taken away. During all that  
time he remained in practically the same state. He  
didn't volunteer any remarks of his own. I am quite  
sure of that. Someone asked him how long since the  
accident had occurred—how long he had been laying



(Testimony of Clifton Herring.)

there and he said he thought about an hour and a half, [274] and he started to feel for his watch; he could not find it, and said he had lost it, and I

started to look for it to see if I could find  
175 it. When I returned with the information that I could not find it, he said it was there, he had lost it. I don't think he told me to go look for it again. In the first place he had asked me to look for it, and I went out and I looked for it and came back and told him that I could not find it, and he said he was sure he had lost it there; he was sure he had had it, and I did go back and look for it. I was working with the gang when

Mr. Sheaff came to the gang. That was along  
176 about the middle of January, 1911. I guess there were sixteen or twenty men in the gang.

It was the wire-stringing gang. The hole digging gang was ahead—was another gang. When I first met Mr. Sheaff he was with the hole-digging gang. At that time Mr. Sheaff was a man of rather commanding appearance, a big, stout, strapping, heavy fellow, and apparently in the full vigor of his manhood. I think there were no signs of ignorance or stupidity about him at that time. I think he ap-

peared like a very bright, intelligent young  
177 man. As far as I know, he was apparently a bright, keen-minded young man. I think he

was about three weeks in that line-stringing gang. I was not with the gang all of the time. I was putting insulators on the poles. That would put me behind the pole-setting gang. The hole-digging

(Testimony of Clifton Herring.)

gang went ahead, the pole-placing gang came next, and the line-stringing gang came behind. All of the linemen in the party were called the line-stringing gang. Mr. Sheaff during those three weeks  
178 worked right with the other wiring men. He was among them, working with them. The wiring, stringing of the wires, and all of that, were apparently in his same neighborhood. A pair of pliers is one of the almost indispensable tools of the lineman. A pair of pliers is an implement that may be used in [275] twisting around wires, in breaking off wires, and in any of the multitudinous things that are necessary to be done in stringing wires, and attaching wires to insulators. The first time I saw Mr. Sheaff after the expiration of this employment was in Wonder. The plant was about a quarter of a mile from Wonder. I was at  
179 the Nevada Wonder mill. That was the mill that was being supplied with power from the Wonder substation, and I was working at the mill. While working at the mill, I was brought into connection with Mr. Sheaff and saw Mr. Sheaff working for the Pacific Power Company. I saw him a week or ten days working around the Wonder substation. I saw Mr. Sheaff principally in the evening at the time. Occasionally at the mill. On these occasions, I would see Mr. Sheaff and Mr. Halpenny quitting  
180 about the same time. They were working there together around the substation, and around the transformers. During that time the Nevada Wonder Mill was being wired. The



(Testimony of Clifton Herring.)

work being done there was the installation of the transformers, and Mr. Sheaff was assisting Mr. Halpenny in that work. I have had considerable experience in electrical matters, and wiring. There is considerable wiring in the installation of transformers. The switch-board work in installing the transformers is more intricate. The switch-board work is the work of bringing the wires into the switch-board, making all the connections, taking them up, wiring the instruments, measuring the instruments, and all that sort of thing.

181 Part of the work would be rather delicate.

So far as I am able to observe, Mr. Sheaff was working beside, or working in conjunction with Mr. Halpenny while all of that kind of work was being done. I was at Wonder when the power was turned in the mill. That would be in the month of June when they commenced to serve power to the Nevada Wonder. I first went over to Fairview about the eighth or ninth of [276] June, I think. I went to Fair-

view, over to the Nevada Hills Company. I  
182 think, on the twenty-eighth of June. Power was turned into the Nevada Hills substation just about the time they were working on the lightning-arrester, about the eighth or ninth of June. I think the transformers were all in. I don't think the Nevada Hills own substation was completed. I think the connections were made in the Pacific Power Company's substation. I don't know when the power was turned in to the Nevada Hills property. I went to work for the Pacific Power Company in

(Testimony of Clifton Herring.)

relation to the lightning-arrester on the eighth or  
ninth of June. I think it was earlier than the  
183 twelfth of June. In addition to installing the  
lightning-arrester, I patrolled the line from  
Fairview to Thorne to see that it was in good con-  
dition. That took me four days, I think. That was  
after I built the lightning-arrester. That was along  
about the fifteenth or sixteenth, seventeenth and  
eighteenth of June. I thought it was two or three  
days earlier than that. I went over more particu-  
larly to drive Mr. Greenleaf to Thorne on his way  
to Bodie. We both followed the line—inspected it.

Before patrolling that line I helped string the  
184 ground line from the Pacific Power Com-  
pany's substation to the mine shaft at Fair-  
view. That was the ground for the lightning-ar-  
rester. I may have installed, or helped install the  
telephone over there; I am not sure as to that. I  
worked on that substation a day and six hours. I  
dug holes for the poles for the ground wire; set poles  
for the ground wire, and struck the ground wire to  
the ground plate into the mine shaft. I was assisted  
in doing that by Mr. Campbell, Mr. Halpenny and  
Mr. Sheaff, I think. I believe Mr. Sheaff assisted in  
stringing the ground wire, and I think he as-  
185 sisted in stringing the ground wire clear down  
to the shaft where they made the ground. I  
don't know the particular things that Mr. Sheaff did  
to that lightning-arrester. [277] I saw him carrying  
materials back and forth. I don't remember seeing  
him assisting in bending the pipe that was to be put



(Testimony of Clifton Herring.)

up there—he may have. I think it was a quarter of an inch pipe. That required some strength to bend around in the direction that was desired. Mr.

186 Sheaff was one of the big strong men of the gang. I don't remember one way or the other about seeing Mr. Sheaff bending the pipe.

Mr. Granquist and Mr. Cook were working in the gang there at that time. I don't know that the only men on the pay-roll during the month of June, of the Pacific Power Company were R. H. Halpenny, P. R. Sheaff, Lee Campbell and C. Herring and that Mr. Granquist and Cook were not there at all. I know that they were there during the month of June.

I don't know whether they were working for nothing or not. I think Mr. Granquist sawed the tim-

187 bers of that lightning-arrester. I don't know

that Mr. Granquist had not been working for the company at all since the fourteenth day of May.

I am quite positive that Joe Cook was there at that time. I may have helped dig those holes, I don't know. I don't know which one it was dug them. I can't account for those details. I don't know every little detail of the work I did or what someone else did. I do not know every detail of the conversation, perhaps. I know of his doing this work around the

transformer house while the conversation was

188 going on. I am quite sure he was not with

the group tying in the horns of the arrester at the time that conversation was going on. I don't know how I remember that little detail so clearly. I was not there, I think, while the fence around the

(Testimony of Clifton Herring.)

lightning-arrester was being constructed. I think I saw the fence there before the accident. I don't know just when. Some time after I had finished this lightning-arrester work, I went to work for the Nevada Hills Company, and at various times, I think I

observed this substation and [278] saw the  
189 fence around it during those times. There

was a danger sign I think on the front door, on the door of the substation. I think it was a blue-print of danger, just a blue-print of the word "danger." I think it was tacked up on the door of the substation. I am not sure whether there was a danger sign on the switchpole or not. I rather think there was a danger sign on the switchposts, I am not

sure. It is my best recollection that there  
190 was one there. I think that was a printed sign. I think the wording of the sign was simply the word "danger." My best recollection is that it read "Danger. Keep out." It was in large plain letters. I don't think I saw any danger sign on the Wonder substation. I don't remember a danger sign there printed on a board crudely with black paint. I believe the Pacific Power Company paid me four dollars a day. The Hydro-Electric Company were paying me four dollars a day.

Redirect Examination by Mr. GEDNEY.

At the time this conversation took place all  
191 the material had been brought over to that location before the horns were put up. During the time Mr. Sheaff was doing that bull-ringing work he was coming in contact with the linemen during his



(Testimony of Clifton Herring.)

work that day. At times he could talk with them. He was working upon the telephone wires. He would be up close to the wagon as the wires were being reeled off; the linemen was strung out a pole's length from each other behind him. My purpose of patrolling that line was to determine if there was any trouble on the line of any sort. This sixty  
192 thousand volt, or fifty-five thousand volt power had been turned on before that time. I don't think it was running on the line at the time we were patrolling. I am quite sure that the switch [279] had been opened at Aurora, or Lucky Boy, so that if any trouble did develop on the line, we could repair the line. I think the high power had not been running regularly at any time before we patrolled that line. I think that four, five or six men did the whole thing on this lightning-arrester  
193 that day. These timbers on the bottom of the lightning-arrester to which you call my attention, I don't think had been framed before that day, or any work done on them. I think this danger sign was on the south side of this post (indicating on model). The trail coming up the hill came up on that side of the substation, and I think the sign was placed on that side.

Mr. GEDNEY.—Q. Could you see that sign so as to be able to read it from the locality of any of  
194 these three holes that you saw under the dead arms of the lightning-arrester?

A. If I am right in the location of the sign on that pole, it could be seen from that end of the lightning-

(Testimony of Clifton Herring.)

arrester, but not from the other.

Mr. CANNON.—Do you mean from the south end?     A. Yes.

Mr. GEDNEY.—Q. Could you read it from there?

A. Why, I presume so.

Q. That is, was it turned in such position, that it could be read from that point?

A. That is my impression, yes.

Recross-examination by Mr. CANNON.

The trail came up this south side of this enclosure, up on that side, and it is my impression that the sign was put across the south side of this post. I believe there was no obstruction between this point where the wires joined the substation on the south, and the post where the sign was placed. A person going in that enclosure at the point you have mentioned, and walking over in this direction to the point where [280] the first pole appears, would be walking practically directly toward that danger sign. In looking around there for that watch, I was careful to keep away from those live wires. I knew the danger of those live wires.

Mr. CANNON.—Q. And you were a four dollar a day man, weren't you?     A. No, not then.

The COURT.—I think I will strike out that testimony with reference to the four dollars a day, and the answer also.

Mr. CANNON.—We note an exception.

The action of the Court in striking out said an-



(Testimony of Clifton Herring.)

swer is here assigned as

**Error No. 22.**

The COURT.—I have been unable to find anything in the direct examination of this witness with reference to his wages and the capacity in which he was employed. When the question was asked  
197 Mr. Gedney objected to it on the ground that it was not within the issues, and not cross-examination. That question and answer will be stricken out. And this last question, “And you were a four dollar a day man,” and the answer “not then,” will be stricken out. Both questions and answers will be stricken out as not a part of the cross-examination.

Mr. CANNON.—We note an exception.

The COURT.—You may have the exception.

The action of the Court in striking out said testimony is here assigned as

**Error No. 23.**

**[Testimony of Dr. George M. Gardner, for Plaintiff.]**

Dr. GEORGE M. GARDNER, called as a  
198 witness on behalf of plaintiff, being first duly sworn, testified as follows:

I am a physician and surgeon and reside at Fallon, Nevada. [281] I am a graduate of Cooper Medical College, 1896. I never acted as an interne anywhere. I have been in constant practice since then. I am acquainted with Mr. Sheaff. I believe I first saw him on July 18th, 1911, at about six P. M. He was brought to Fallon from Fairview to the

(Testimony of Dr. George M. Gardner.)

Rand Hotel, situated next to my office. He  
199 was suffering from burns. He was suffering  
from eight circumscribed burns upon the left  
shoulder and upper arm, varying in diameter from  
a half to about an inch and a half; burns of the third  
degree, which extended through the skin, subcutane-  
ous tissue and muscular tissue, for the depth of about  
an inch. The eight burns covered the left shoulder,  
the upper portion of the left arm, and the super-  
scapular region of the left portion of the back, about.  
By "superscapular," I mean the upper portion of  
the left shoulder. By "subcutaneous," I mean the  
tissue immediately beneath the skin. There  
200 are several layers to the skin. There is the  
outer layer of squamosepithelium—I would  
say four or five layers of epithelium; then there is  
fibrous layer; then come the layers that contain the  
circulatory vessels and nerves, and also the nerve  
filaments run into the epithelial layers. The term  
"circumscribed" would indicate the line between the  
unburned and the burned tissue, in a circle. By  
burn of the "third degree," I mean a burn which has  
destroyed the entire skin, or more than the entire  
skin. These eight burns, so far as the third degree is  
concerned, were connected by what I have  
201 termed the first degree burns. In this first  
degree burn the epithelial layer of the skin  
was destroyed—a surface burn. He had a circum-  
scribed burn on the right shoulder, the upper and  
outer portion of the right shoulder, which was of the  
third degree, with a diameter of about an inch and a



(Testimony of Dr. George M. Gardner.)

half, destroying the skin subcutaneous tissue and muscular tissue to the depth of about a half to three-quarters [282] of an inch. He had on the right side of the back a wedge-shaped burn, about  
202 ten inches long, four to five inches wide at its base in the upper portion—that is, the base was in the upper portion; the situation of the burn would be in the supescapular; the scapular and the subscapular and interscapular regions. At the upper portion, the base of the wedge was a circumscribed area of burned tissue, the diameter of which was about an inch and a half, and in depth was down to the scapular bone. On the left foot there was a burn of the third degree, destroying the skin, subcutaneous tissue, muscular tissue, the nerve  
203 filaments and the extensor tendons of the three smaller toes. This burn extended from the ankle joint above to the toes below, about ten to twelve inches long and about three inches wide. The two smaller toes were completely destroyed, being a solid mass of charred tissue. Those two toes I removed. On the right foot there was a burn of the third degree, extending from about two inches above the ankle joint downward, forward and inward to the inner angle of the planter surface of the foot; thence across to the outer angle of the planter surface, stopping at the small toe. This burn was one  
204 of the third degree, destroying the skin, subcutaneous tissue, and nerve filaments; on the planter surface destroying the extensor ligaments, planter facia, and all muscular tissue down to

(Testimony of Dr. George M. Gardner.)

the bone affecting the periosteum. The planter arch, in common term, is the bottom of the foot.

Mr. GEDNEY.—Q. What is the outer planter surface?

A. The angle, the outer planter—call it surface, to indicate the outside of the bottom of the foot; the inner angle is the inner side of the bottom of the foot.

WITNESS.—(Continuing.) There were superficial burns from the back, extending up to the back  
of his neck, and to the right [283] side of  
205 his face, to the upper angle of the left ear.

Those were superficial burns—didn't amount to anything, just say they were superficial burns. Aside from the burns that I have described, he was suffering intense pain; he was in more or less of a subconscious condition—a periodical subconscious condition. He was suffering shock; he had a sub-normal temperature; he had a pulse of a hundred and ten, and his respirations were thirty a minute. The normal temperature is ninety-eight, and from  
two to six-tenths. The normal respiration is  
206 about eighteen. His pulse at that time when I took it, after he was laid on the bed, was one hundred and ten. The normal pulse is about seventy-four. He was suffering from intense pain when the dressings were removed; the removal of the dressings was extremely painful, and the dressing of the wounds extremely painful; that is, the operation in the taking off and putting on of the dressings; he would roll in agony and grasp the bed clothes, and showed every sign of the most intense suffering. I



(Testimony of Dr. George M. Gardner.)

207 treated the wounds, removing all of the  
charred material, burned materials—all that  
was possible to remove; dressed the wounds  
with oil and limewater for the relief of pain and to  
keep out the air. The deeper wounds I dressed first  
by using antiseptics; and continued each day to re-  
move as much of the burned material as it was pos-  
sible to remove; and later on as healthy granulations  
appeared, I continued to dress antiseptically the  
wounds, until I had finished the work. By the ex-  
tensor tendons, I mean the tendons on the upper sur-  
face of the foot; those tendons, which extend the  
foot. The tendons supplying the three small  
208 toes of the left foot were destroyed. They  
are in the planter surface of the foot. At the  
present time, that whole mass is a scar tissue mass.  
I am speaking with respect to the right foot. The  
planter surface of the left foot is not a scar tissue.  
The left foot is the dorsal surface. If you under-  
stood [284] me to testify that in the left foot the  
tendons supplying the three smaller toes were de-  
stroyed, that is a mistake. They are destroyed to  
a degree in the left foot; but whatever is left  
209 of those tendons and filaments is involved in  
scar tissue; they are absolutely worthless; if  
there was a filament left; they were all charred and  
burned, and are now, at the present time, involved  
in a mass of scar tissue, if they are there at all. I  
removed the two smaller toes of the left foot the next  
morning after he arrived there; they were charred  
masses, and I cut one toe off without giving any

(Testimony of Dr. George M. Gardner.)

anaesthetic at all—simply took a knife and cut off the burned mass. I gave an anaesthetic for the other toe. I gave him heart stimulants for his  
210 shock; I gave him strychnine, hypodermically; one-thirteenth of a grain, repeated as it was necessary; also whiskey under the skin. I gave him morphine, guarded by atrophine—the morphine for the pain which he was suffering, and the atrophine to keep up his heart action—to guard the morphine; that was used as little as possible, as he was in a very serious condition. The strychnine was administered for his heart as a tonic—a stimulant. I believe I gave him whiskey. I gave him about fifty minimums—fifteen drops to twenty drops under  
211 the skin, hypodermically. That was administered also as a heart stimulant. I might say that I left out under the question of physical condition there, the condition of his water or urine, at the time he came in there. He was passing blood, and did so for about three weeks. The acute suffering continued for three weeks—of intense suffering—the most intense suffering that one could imagine; even with the giving of opiates it did not relieve him; in fact, it was impossible to give enough opiates to relieve him, on account of the condition that he  
212 was in, the weakness, in every sense, of the heart. Mr. Sheaff was confined to [285] his bed three months. After he came under my charge he did not sleep. For three weeks he never slept normally; all the rest that he could get would be out of opiates; and that was given to him in the



(Testimony of Dr. George M. Gardner.)

minimum amounts on account of his physical condition; even with opiates, even after giving him an opiate, he would not rest even then. In bed, the way he would lie would be on his side—on his right side

mostly; if he would at any time roll back, on  
213 his back, he would immediately ask for relief from the position, on account of the burns on

his back. When Mr. Sheaff was first brought to me his muscular condition physically was excellent.

The only way that I could describe his physical condition, would be to say in toto, that he was about one of the best developed men that I ever saw—his muscular system was perfect. He commenced to run down immediately; his general system, his general muscular system, became wasted. He became emaciated; the term “emaciation” would be an extreme

dropping of the muscular system to a very  
214 low ebb; all muscles becoming flabby and the color of his skin changing to such an extent

that the term emaciation would be used—loss of weight. I could not give you his weight when he came there, and I didn’t weigh him afterwards; the only thing I can say is that there was such a great difference between his condition, that one offhand might judge that he had lost thirty or thirty-five pounds, possibly more—possibly forty pounds. Mr. Sheaff is permanently crippled in both feet. I base

that upon the extent of the burns, the loss of  
215 the several tissues involved, and upon the scar tissue that is formed in the place of the tissues destroyed; and knowing from the first that such scar

(Testimony of Dr. George M. Gardner.)

tissue must necessarily form from the amount of destruction present when I was treating him. The destruction of the extensor tendons takes away the motion that is produced by those tendons—the muscles connected with those tendons. [286] In my opinion, he will never be able to walk upon the right foot, because of the loss of the tendons, more particularly the scar tissue which has formed in  
216 that region being inelastic, and so deeply involved; that scar tissue involves all of the region where the destruction took place. The right foot at the present time is healed. The right foot abscessed under this scar tissue about sixty days ago, and broke out on the ball of the foot just at the base of the small toe; the abscess running from the middle of the planter surface, just under the scar tissue; to this opening. That was treated antiseptically, and closed up about thirty days ago; it was about  
thirty days running the last time. That has  
217 occurred, I believe, that is the sixth time since he was burned; this abscess forming there, and it was due to the fact that he was over-exercising the foot; gave it a little more exercise than it could stand and these abscesses formed each time that he has done that. The tendon of Achilles is very much shorter—pulled up. The cause of that shortening was the involvement of the tendon in the scar tissue; and the contraction of the tendon, due to the inflammatory condition that was present during the  
latter part of his injury. The ankle joint has  
218 a limited motion, due to the contracture of the extensor tendons; or due to the scar tissue that



(Testimony of Dr. George M. Gardner.)

has taken the place of the extensor tendons. The joint cavity was not affected, as far as I could see. The burn at the ankle joint went down apparently to the bone tissue, and right up against the cavity of the joint. These burns had the effect that the tissue sloughed away, and was removed in large masses by myself at intervals when the separation took place, between the healthy tissue and the dead tissue. This sloughing condition continued for about three months.

Mr. CURLER.—Mr. Sheaff, will you just  
219 step up here. [287]

(The plaintiff comes forward.)

Q. Doctor, I wish you would show on Mr. Sheaff's foot—right foot—where the tendons were that you say were destroyed.

A. Right in here at this point (indicating on foot of plaintiff). On the planter surface is where the destruction has taken place, at this region. Those tendons run right down through here (showing); and, in fact, the whole distance, these tendons have been affected; but here (indicating on plaintiff's foot) is the main portion; that was clear to the bone.

Q. What do you mean by "here"?

220 A. On the planter surface, the bones were exposed,—right in this region (showing).

Q. The bones were exposed right in this region, what do you mean by "this region"?

A. On the planter surface of the foot, about the center.

Q. Doctor, how much motion is there to that foot?

(Testimony of Dr. George M. Gardner.)

A. Well, there is the motion (illustrating with the foot of plaintiff.) Here is the place—

Q. (Intg.) I was just going to ask you, will you show the jury where that abscess that you spoke of that just healed thirty days ago, was?

A. The abscess cavity was here (indicat-  
221 ing).

Q. By “here” where do you mean, in the center of the foot?

A. In the center of the foot on the planter surface, under the scar, and ran forward to that part of the small toe, and broke through under the small toe.

WITNESS.—(Continuing.) The effect on the nerves and blood vessels in that foot has been a lack of sensation, in the scar tissue, right here, (showing on foot of plaintiff), right around in this region.

The top of the foot, the extensor [288] sur-  
222 face is also anaesthetized; you can take and stick a pin in—do you want me to stick it in?

Mr. CURLER.—No, never mind.

The WITNESS.—You can’t hurt it, anyway.

WITNESS.—(Continuing.) I find the tendons of Achilles solid, outside of the contraction; it is all there. That tendon is very inelastic now. That which you show me is a photograph. I know this is a photograph of Mr. Sheaff’s back. It was taken on September 6th, 1911. That is a fair representation of the appearance of the right shoulder of Mr. Sheaff’s back at that time. I was present when the  
photograph was taken.

223 Mr. CURLER.—We offer it in evidence.

Mr. CANNON.—No objection.



(Testimony of Dr. George M. Gardner.)

The COURT.—It will be admitted. Have you others?

Mr. CURLER.—Yes.

The COURT.—Hand them all to counsel, and the one you wish the jury to look at may be passed around now.

Mr. CURLER.—Have you any objection to those photographs?

Mr. CANNON.—Yes, I have an objection to these photographs, in this, that apparently they are photographs of parts of the body, and with bandages and other evidences of treatment by physicians; in other words, that it don't purport to show the bare evidence, without regard to the dressings, of  
224 whatever has been done by the physician, or others, in connection with it. I did not object to the other photograph, because it presented the bare back, but these photographs present some surgical conditions in connection with them, and I therefore object on those grounds; and on the additional ground that they can serve no useful purpose in this case, other than create some sympathetic consideration. [289]

The COURT.—The objection will be overruled.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said photographs to be admitted in evidence is here assigned as

**Error No. 24.**

225 WITNESS.—(Continuing.) These photographs were all taken on the sixth day of September, 1911.

(Testimony of Dr. George M. Gardner.)

I was present at the time. They are fair representations of what they purport to show, as it appeared at that time.

Mr. CURLER.—I think I will have these marked separately.

Mr. CANNON.—Are you going to offer them separately, or have you offered them yet?

Mr. CURLER.—I offer them all in evidence, and I offer them separately so as to designate each one for the purposes of the record.

Mr. CANNON.—I object to each and all of  
226 these photographs being admitted in evidence;  
and object to each of them on each and all of  
the grounds heretofore stated.

The COURT.—The objection will be overruled.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said photographs to be received in evidence and shown to the jury is here assigned as

**Error No. 25.**

(The photographs are marked Plaintiff's Exhibits Nos. 4, 5, 6, 7 and 8, respectively, and shown to the jury.)

There is about three-quarters of an inch difference  
in the length of Mr. Sheaff's foot, as near as  
227 I can tell. The right foot is smaller. The  
dragging up of the scar tissue causes the  
difference in the length of the foot. The scar tissue  
dragging up is also the cause of the difference in the  
[290] size of the right foot. The right foot is very  
cold at all times as compared with the left foot. Mr.



(Testimony of Dr. George M. Gardner.)

Sheaff will never be able to place the right foot on the ground while in an erect position, and he will never be able to walk on the foot because of  
228 the scar tissue that is present; because of the loss of the ligaments that should do the work; because of the dragging up of the tendon Achilles; because of the pain it would produce, and has produced. Mr. Sheaff will be able to do no manual labor that will require the use of his feet. Those spots in Plaintiff's Exhibit Number 5 are the circumscribed areas of the burns that I have described heretofore on the right shoulder—taken September 6th. The third toe from the small toe of the left foot is absolutely immovable; it is bound tight to the foot; the burn caused that.

Cross-examination by Mr. CANNON.

229 I graduated from Cooper Medical College in 1896 and came direct to Elko, Nevada. I practiced there eight years and then I went to Fallon. I have practiced there to the present time. I never took any post graduate course in the Cooper Medical College. I have been back several times to the clinics in San Francisco, just visited them occasionally. I was twenty-two or twenty-three when I graduated. It was a four-year course. I was not an interne in a hospital. As a part of the course  
230 we had to perform our ordinary duties in clinics. Aside from that I have had my own hospital service; I have had two thousand men under my care in my own hospital. Outside of my own hospital service, I have never had any service in any hospitals in San Francisco or in the East or

(Testimony of Dr. George M. Gardner.)

in Europe. My practice is mostly surgical. I have learned modern surgical methods by study and practice and observation. I have had opportunities of observing Doctor Stanley Stillman; Doctor Emmitt Rixford, Doctor Rigdon, and many other surgeons

[291] connected with the Lane Hospital, that  
231 is, during the time I dropped into the clinic when I happened to be in San Francisco. I have assisted these gentlemen many times on cases. I have taken to them in my early practice. I was accustomed to take surgical cases to San Francisco up to within the last three or four years. In the last three or four years, I have ceased taking surgical cases to San Francisco or some other city, with the exception of probably two or three times. During the last two or three years, I have taken surgical cases to San Francisco for treatment. I did not take

Mr. Sheaff to San Francisco. I did not oppose  
232 taking Mr. Sheaff. Since I undertook the treatment of Mr. Sheaff, I don't believe I have taken cases to San Francisco for treatment by some of these eminent surgeons I have mentioned. I might have taken one. There is a bare possibility that I had a gall-bladder case that I took to San Francisco. I have had experience in skin grafting. I have never spliced a tendon; I have seen it done. I have cut the tendon Achilles in different cases. I have lengthened the tendon Achilles when there was  
a contraction of it. I have performed the  
233 operation of lengthening the tendon Achilles.

It can be done early in life. By contraction of the tendon Achilles the heel is drawn up. When that



(Testimony of Dr. George M. Gardner.)

tendon is involved in the scar tissue, the tendon cannot be lengthened and brought back to the condition it originally was. That tendon can be lengthened by the splicing method. That has been in vogue by some surgeons.

Mr. CANNON.—Q. Now, just tell us how the tendon Achilles can be lengthened by the splicing method.

A. I can give you an illustration on the board, if you want.

Q. You can give us an illustration on the blackboard.

234 (Witness draws on blackboard.) [292]

[Exhibit—Illustration Drawn on Blackboard as to Tendon Achilles.]



A. By cutting them on that one side of it, and cutting down through here, you let the tendon slip. That is not a very good illustration; I am not much of an artist. By cutting in here and down here (show-

(Testimony of Dr. George M. Gardner.)

drop, leaving just a section of the tendon on the other side to hold it. By the lengthening method; by that method, if it were not in scar tissue at the present, you could lengthen the tendon all  
234 right enough; you could lengthen it anyway if the scar tissue is there, but you will have no better result by that than you have at present.

Q. Would you explain this drawing a little more particularly?

A. Well, it is a method of cutting out this section, and letting this side drop down, by thinning this tendon out; it is a matter of plastic work, some work that I have never done; the operations that I have performed has been to cut entirely through the tendon, leaving the posterior wall for the healing up  
of the tendon on that wall. That method is  
235 the one in vogue. This method here is in vogue also, but is of no more avail than the other method.

WITNESS.—Continuing.) I have never performed this operation but I have cut the other—cut the tendon in the other operation. The other operation also has the effect of lengthening [293] the tendon. There are really two ways by which a tendon which is contracted may be lengthened. One of those ways I have used myself and the other I have not. Both are in vogue. I have never consulted  
with any of these eminent surgeons that I have  
236 mentioned as to the advisability of lengthening the tendon Achilles on this particular plaintiff—I didn't feel it was necessary. I was content to rely upon my own judgment absolutely in the



(Testimony of Dr. George M. Gardner.)

matter and I never was requested at any time to do anything. I was satisfied with my own judgment in that case. I didn't think it was necessary to consult with anyone as to the advisability of lengthening that tendon. I said in response to a question you asked me while the foot was bare, that the tendon Achilles was all there; that is correct. That

237     scar tissue involves—drags up along the side of the Tendon Achilles. I don't think it would bother much to disconnect scar tissue from the tendon itself. That is a very easy thing as far as that is concerned. By simple surgical interference of that kind you can get the tendon Achilles separated from the scar tissue in its neighborhood. A tendon is a fibrous—white fibrous tissue—that connects the muscle at the one end to a bone at the other, for the purpose of producing motion through the contraction of the muscle. A muscle is a tissue that

238     contracts and expands. It is through the muscle that we get the motion. A tendon is fastened to the end of the muscle. That has no natural contraction or expansion. It is a very tough, strong fibre. There is nothing in the way to prevent, from the surgical standpoint, that tendon Achilles being lengthened. It is contracted now. That contraction has the effect of drawing up the heel; that helps to hold the foot fast in the position that we have observed it. If that condition were removed, it would lower the heel, and in lowering the

239     heel, it would tend to [294] bring the foot in the natural position, and weaken the ten-

(Testimony of Dr. George M. Gardner.)

don. When a tendon is lengthened by proper surgical interference that tendon is never as good as it was originally. I know that through experience. I have lengthened it. I consider the method I have attempted to show on the board the poorest method of the two. That is the reason I don't try it. I have seen the results of that method, I never had a case of my own that I ever performed that operation on; I have seen the result of that  
240 operation but have not been continuously with the case. I remember one particular instance; a man who had that tendon lengthened in that way. Nature always tries to help. My opinion is based upon my own experience in regard to tendons and the seeing of other cases. I have had several operations. I have had four cases by the other method. They came a considerable distance apart. The tendon was lengthened all right; it also united; the leg was weak and always will be weak, in my judgment; the legs don't develop properly after that.

I had about the same success with the second  
241 and with the third, and with the fourth. I would consider them all successes. I did these on children who had drawn-up tendon Achilles-club-feet; and I found that the development of the leg and the tendon was as good as it could have been originally. The feet were changed in the direction. The feet became more usable than they were before, I think. They were in better direction anyway; they were in the normal shape. Being in the normal shape they got more use out of them. With the condition of the person here, with an adult, you



(Testimony of Dr. George M. Gardner.)

would not get such good results. As to  
242 whether you would get improvement, I ques-  
tion it, I don't know. Under ordinary cir-  
cumstances, an adult, twenty-six years old is not a  
bad subject for operative purposes. A man who is,  
aside from his injuries, a perfect physical specimen,  
young, is really a very fine subject for operative  
measures, for certain [295] things. It is not a  
fact that I could bring that right foot back into nor-  
mal position by lengthening that tendon because of

the scar tissue that is under his foot. That  
243 scar tissue can be massaged, that is the best  
you could do for the scar tissue on that foot.

Unless it is a very superficial scar, nothing can be  
done for it. In the case of superficial scar tissue,  
the same thing can be done—a massage. Skin graft-  
ing is resorted to, to cover large areas of uncovered  
tissue, and to cover up the space which is sometimes  
filled by scar tissue. It is not possible in this case  
to cover that area with good skin, the scar is too deep.  
If you had a raw area, uncovered by skin, if the base  
of that area was healthy, you could put a skin  
244 graft on it successfully; but where an area is  
destroyed en masse, and where there is no  
chance for you to put a skin graft on, because there  
is no tissue there to put it on, you could not skin  
graft. I have never consulted with anybody about  
the possibility of skin grafting in this particular  
case. It occurs to me that skin grafting could not be  
done in this case. I don't think it has ever occurred  
to me that I might be wrong in my opinion.

(Testimony of Dr. George M. Gardner.)

These tendons that were involved in this right foot were the extensor tendons. They lie on the  
245 planter surface of the foot. The extensor longus digitorum, the extensor hallucis and the extensor brevis tendons all lie on the planter surface of the foot. A flexor tendon of the foot is one that draws the foot up, and the extensor tendon is one that pulls downward. When I close my hand the flexor tendons come into operation. When I open my hand the extensors come into operation. The extensors are on the back of my hand and the flexors are on the inside of my hand. Now, a person in moving his toes draws them up similarly to a person closing his hand. [296]

246 Those tendons that pull the toes up are, and they are not flexor tendons. Some authors have tried to call the—what I am terming the extensor tendons, the flexor tendons, and some would term it the opposite; now you can take that for what you wish, if you wish to call those extensor tendons or flexor tendons, you are right in either case. We would both be right about it; but I choose to call those the extensor tendons, and in referring to them have referred to them in that way. I call an  
247 extensor tendon one that flexes, and I call one that flexes an extensor. You can interchange the term. I have interchanged them myself. That is all right, some authorities use them that way. Some have changed, reversed the order, and call the extensor the flexor, and the flexor the extensor. The office of these tendons that I speak of is to flex the toes. These tendons run around in this direc-



(Testimony of Dr. George M. Gardner.)

tion over the foot, fasten to the bone, and perform the office of flexing the toes. There are other ten-

dons on the back of the foot that run down,  
248 and connect with the toes on the other side,

and perform the office of pulling the toes out again when they have been flexed. Some of these

tendons run in pairs and some don't. One pulls on a bone and the other pulls the bone back in place

again. One is on the under side of the toe, and the other will be on the top of the toe. These tendons

which you call the flexor tendons and which I call extensor are involved in this scar tissue on the bot-

tom of the foot. They are destroyed in that  
249 foot. I know that they are destroyed because

when I opened that—when I first saw that foot, I took out the mass, and pulled the tendons out

—pulled out the pieces in toto from it; and it was burnd clear to the bone and I could see the bone

beneath the tendons, and beneath the facia; therefore they are gone. I could see the ends of tendons

—fibrous ends. I saw them. [297] When the tissue that sloughed off there enabled me to see, I could

see the mass of the ends of the tendons coming out in strings. It would have been absolutely im-

possible to fasten them together, or heal them.  
250

I should say I made no attempt to do it. It is not a proper case in surgery in any sloughing

masses where you find tendons cut in two to fasten those tendons together. The tendons themselves

are sloughing masses. Yes, they were involved; they were burned and charred; and it would have

been impossible to have extended those tendons

(Testimony of Dr. George M. Gardner.)

across that burned mass in the condition that it was  
in, in the sloughing condition, and ever expect to  
get a primary union; or any kind of a union at  
251 all. I treated that sloughing mass antisepti-  
cally, and it would have been absolutely im-  
possible to have attached those tendons in the  
sloughing condition that was present. Dr. Lehnert  
of Fallon looked at that with a professional eye to  
see whether it should be let alone or something done  
with it. He was the Doctor that took my place in  
attending the patient while I was in San Francisco  
for a time. He was the only other physician in Fal-  
lon who ever in any way acted with me in the treat-  
ment of that case. He and I consulted  
252 whether those tendons should be left to take  
care of themselves, or whether something  
should be done with them surgically. We never  
talked about their ever being joined because the sub-  
ject was so foreign to ever possibly being joined that  
we could not talk about it. We did not talk about  
joining those tendons. We did not consult on that  
subject. That foot can't be helped. I can't help  
that foot. I give it up. The lengthening of that  
tendon Achilles won't help that foot. I was con-  
templating cutting off his leg. He would have a  
wooden leg. I think it would enable him to  
253 throw away his crutches, and would, I believe,  
enable him to walk along the street so that  
people would hardly observe that there was anything  
the matter with him. [298]

Mr. CANNON.—Q. It might even happen with



(Testimony of Dr. George M. Gardner.)

both feet, might it not, Doctor?

A. I think I have a pretty fair demonstration of a couple here.

Q. I don't want to pursue anything personal.

A. I am not ticklish about it.

Q. You have no objection to stating it to the jury, that you yourself are in that condition?

A. Yes, sir.

254 Q. It seems to me you are the best possible illustration of the success in that direction that I have ever had occasion to observe.

A. Well, taking into consideration the fact that I am not a laborer, I do fairly well.

WITNESS.—(Continuing.) I even operate my own automobile myself in that condition and perform all the multitudinous duties of a physician and surgeon in that condition. I was in that same condition when I had these two thousand men to look after, and I managed to do the medical and surgical work for those two thousand men in that condition.

I would rather take his leg off myself; I believe that is the best thing. I would prefer to  
255 remove his foot for the sake of the pain that he has. On the sixth of September, when these photographs were taken, I believe at that time the patient conceived the idea of suing the company. He told me he wanted to get these photographs taken, that he might need them later. I didn't see any lawyers around when these photographs were taken. The patient himself told me that he was figuring on a damage suit against this company if the company

(Testimony of Dr. George M. Gardner.)

256 did not treat him right, or something of that kind. He said he was sorry he had not taken them before, because they would have looked so much worse. I didn't suggest the taking of these photographs. [299] I saw a telegram which was sent to Mr. Gileece. Mr. Gileece had it with him on the same day of the injury, I think.

Mr. CANNON.—Q. I call your attention to this part of this letter that is quoted, and ask you if that is the substance of that telegram? (Handing letter to witness.)

A. (Reading:) “If Sheaff is badly hurt and proper medical attention cannot be had at Fallon, better take him to Reno. Understand that  
257 Doctor Sidney Morrison is reliable and can place in good hospital.” That is the telegram, yes.

Mr. CANNON.—We offer that in evidence.

(The telegram as read by the witness, is read to the jury by counsel for Defendant.)

WITNESS. — (Continuing.) I don't know whether I sent a telegram to the Pacific Power Company on July 19th, after seeing the telegram I have just identified. I don't know whether I did or not, I might have.

Mr. CANNON.—Q. I show you what pur-  
258 ports to be a copy of a telegram signed and sent by you, and ask you if you sent the original of that, and if that is a correct copy? (Hands to witness.)

A. Yes, I sent this.

Q. You sent that telegram, did you? A. Yes.



(Testimony of Dr. George M. Gardner.)

Mr. CANNON.—We offer that in evidence.

The COURT.—Very well, it will be admitted.

(The telegram is marked Defendant's Exhibit "R," and read to the jury:)

[Defendant's Exhibit "R"—Telegram, July 19, 1911, Dr. Gardner to Pacific Electric Co.]

"Received at 9:40 A. M.

July 19th, 1911.

Dated Fallon, Nevada.

To Pacific Electric Co.,

Bodie, Calif.

Mr. A. Sheif serious burn but is doing as  
259 well as could be expected. He is comfortably  
located and I am giving [300] him the best  
of care. His recovery necessary will be slow but out-  
come should be favorable.

Dr. G. N. GARDNER."

WITNESS.—(Continuing.) That was my diag-  
nosis at the time I sent that telegram. That diag-  
nosis was wrong evidently. When I said that he  
received a serious burn that was a diagnosis and  
when I said that his recovery would be slow, but out-  
come should be favorable, that was a prognosis. I  
was in charge of the case at that time. I saw the  
suggestion as to his being taken to Reno to a hospital.

The answer to that was that the man who re-  
260 ceived the telegram told me he was satisfied  
he could get as good service in Fallon as he  
could at Reno, therefore he left him in Fallon in my  
charge. I sent that telegram as a matter of infor-  
mation, to let them know that he was still alive, and  
doing as well as could be expected, and the expect-

(Testimony of Dr. George M. Gardner.)

tancy shown was very good. I treated him regularly and steadily over three months—daily treatment, After that my treatment was intermittent. I treated him after that but that is all I ever charged  
261 the company with. I was not assisting in the preparations for the commencement of this suit against the company. I have given the patient assistance. With respect to the commencement of this suit, I have not had anything to do with the lawyers at all excepting since this suit was commenced. Before the suit was commenced, I was in conference with the attorneys just as a witness, as to what I knew. I was never in the attorney's office in regard to this suit before it was brought. In Fallon they asked me  
262 in regard to the condition of the patient. I gave them the injuries when they asked for them. That was along whenever the suit—whenever they started to talk about this. When the lawyers came there, I don't know what day it was. I could not give you the date to save me now. I was not in any long conference with them. I gave them this information that plaintiff [301] had received eight electrical burns in the upper and posterior portion of the left shoulder region. I gave them the information that the plaintiff had received “a burn on the right side in the suprascapular, scapular, infrascapular  
263 and interscapular regions.” And “a burn extending upward from said last-mentioned burn to both shoulders and to the neck behind, thence to the left side of the face as far as the upper portion of the left ear”; I gave them that. I described in detail for the attorneys, and for their



(Testimony of Dr. George M. Gardner.)

benefit, preparatory to the commencement of this suit, all of these injuries. I think I wrote that at my office in Fallon for them and sent it to them. I think that was along about the sixth of September

that the photographs were taken. I think it  
264 was the lawyer asked me for it. I came from

Fallon to be a witness here about sixty or sixty-five miles. I have been here all the time since this trial has been in progress having a good time and spending my time here and my money too. I was subpoenaed to come here. I have explained about the destruction of the tendons supplying the two smaller toes of the left foot. Those tendons are really no longer of any necessity, inasmuch as the toes which they were supposed to manipulate have been taken off. As I treated this right foot

265 and as the sloughing process proceeded, I would take the dead matter away. I observed carefully to see when healthy granulations would start. As my course of treatment went on, I observed that granulations proceeded along to its present state. After that healthy granulations had occurred and the sloughing had all ended, I made no attempt to catch up the loose ends of these tendons, and tie them, or fasten them together. Those tendons were then involved in a mass of granulations,

and the lengths of them never would have  
266 come across. You could not splice them at all, because of the distance of the burn; because of the sloughing [302] mass that continually kept up in separating, as the granulations followed it up; the skin on the outside, the scar tissue

(Testimony of Dr. George M. Gardner.)

kept forming in, just as the granulations came up; if the skin would come too fast you would have to hold it back. There was nothing for it to grow over, unless the mass of granulation tissue had filled in sufficiently to round the foot off nicely. The destruction was too great. Catching up the loose ends of those tendons, separating them from the  
267 scar tissue and joining them together again could not have been done. The entire tissue, tendons, *muscular* and everything, were destroyed. I made no attempt to do that. I did not consult with anybody else as to whether it should be done.

Mr. CANNON.—Q. I have drawn on the board what I conceive to be a representation of a means of splicing a tendon. Let this, Doctor, represent the tendon (referring to illustration on board); it is, say, the tendon Achilles; you make then an incision here, carrying it down through the center of the tendon, cutting off here—completely severing  
268 it? A. Yes.

Q. That is the idea so far, is it? A. Yes.

Q. Then they become separated, and the contraction is reduced in that way, is it? In other words, when it is cut in two there is the relief from the contraction, isn't there? A. Yes.

Q. It allows the heel to drop, that is right, isn't it? A. Yes.

Q. Then you take this part—the upper part—and draw it up, or draw the lower part down, put this end in juxtaposition with this end, and you  
269 have the result which [303] I show in the next figure, haven't you, Doctor? A. Yes.



(Testimony of Dr. George M. Gardner.)

Q. And then these two ends are put together, spliced, and nature heals them together, doesn't it?

A. Yes, partially.

Q. And then nature gets busy, and fills up the gaps that are left there? A. Yes, sir.

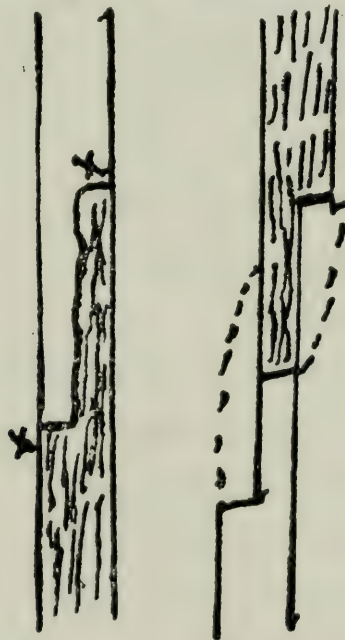
Q. That is the process, and that is the natural surgical process, isn't it? A. That is one of them.

Q. And that is recognized by the most eminent surgeons of the country, isn't it?

A. Yes, that is a recognized operation.

(The following are copies of the drawings made on the board by counsel:)

**[Copies of Drawings Made on Board by Counsel as to Splicing of Tendon Achilles.]**



270 Q. When the healthy granulation commenced on this foot, after the sloughing, why didn't you skin-graft on top of it?

A. The skin had already filled in—the scar tissue had filled in there.

Q. When the granulation was forming, or when it

(Testimony of Dr. George M. Gardner.)

had formed, couldn't you then have skin grafted?

A. No, the surface was sloughing to the last degree; as long as the surface was open there was always a slough going on there.

WITNESS.—(Continuing.) That contraction of the tendon Achilles continued, kept drawing up continuously, more and [304] more, for a  
271 period of three months. I took measures while treating this man to prevent that contraction from taking place. I tried to force the foot up into position, and draw it down by main force. Contraction could not have been prevented in this case. That contraction that turns a person's foot in that position is called Talipes equinas. There are two kinds of talipes equinas, the congenital and the acquired. The congenital is where it appears from the day of birth. Even those conditions are more easily remedied by an operation than this. The acquired talipes equinas is something that the  
272 surgeon notices as the case progresses. He can see it contracting more and more before his very eyes. Proper surgical treatment is to extend the foot, flex the foot; but it was absolutely impossible to do it with this foot, for the reason that it was in such a shape that pain alone—he could not have stood it; I tried it, and it could not have been done. If I could have put that foot by any flexion—flexing the foot, putting it in a normal position, that would have been the treatment; but the way this foot was, it was absolutely impossible to do it;  
273 I tried it, and abandoned it. That condition is sometimes caused by habitual posture. If



(Testimony of Dr. George M. Gardner.)

anybody's foot was simply put in that position and kept in that position in a plaster cast for a very considerable time, when the plaster cast was taken off the foot would be stiff and you could not handle it at all to a certain extent. That might have been acquired by a patient lying in bed suffering from injuries, holding his foot in that position because it was less painful than in some other position. The inflammatory condition in the foot caused that pain. The contraction of the tendon Achilles is what has put the foot in the condition it is in. That is not the only thing. [305] The scar tissue involved through the mass of that foot also held that foot in that position. That scar tissue has contracted since—that foot is not in the position now that it was while it was being dressed; that contraction has taken place during the formation of scar tissue. At the end of my three months' treatment that contraction was not present as much as it is now. There is not much difference in the contraction. The patient exercises that foot as much as it is possible. I have always tried to keep him exercising it, trying to get rid of that condition; and find that it was absolutely impossible in the two years, or two years and a half, up to this time, that you find it just as it is there; he has made effort after effort, and I have coaxed him in every way, shape and form to try to get that foot down, and the result is negligible. I recognize exercise as proper in his particular case. The joints are all right, so far as I have been able to observe. In the right foot the joints are perfect so far as I

(Testimony of Dr. George M. Gardner.)

know, that is from the bone itself. The bone was involved to a certain extent, although I never made any particular note of it. I have assisted the patient in a way so that he could give the proper exercise which I say is beneficial. If I had lengthened the tendon Achilles, I don't know that it would have enabled the ankle joint to be used to a greater extent.

It would have produced an infection in that  
277 foot, if the tendon Achilles had been severed,

I would in all probability have infected the foot from the wound of injury that was already there, and would have created an inflammatory condition that might have created general blood poisoning, and I have never taken a chance of opening into the tendon. I don't mean danger from infection only from that which was already on the foot, an inflammatory condition. Right now if that tendon were lengthened it would drop his [306] foot.

With that reduced, it would be in a better con-  
278 dition for looks. I don't think it would be in

a better condition for exercise, because I think that he would do more by exercising his foot as he is; he cannot improve it over the condition it is in now. At present that tendon is contracted so that it is so tight there is hardly any motion there. If it were lengthened out to allow the heel to come down, I don't think there would be more motion. The heel would come down. I don't know that the heel would even drop when the tendon would come down there.

It might be stiff in other parts. He would  
279 never get exercise as long as he had that scar tissue there. I do advise exercise in the con-



(Testimony of Dr. George M. Gardner.)

dition he is in now, and I still advise it, and I think it is the only thing to do, and yet he gets no relief from it. I advised it with the hope that it might help him to get more motion, and more motion is certainly beneficial. I don't know as you would get more motion by dropping the heel—you would get a change of position. On the sixth of September, there was a heavier contraction than at the present time.

280      Mr. CANNON.—Q. I show you Plaintiff's Exhibit Number 7, representing the right foot, and ask you if there was as much contraction in that foot then on September 6th, as there is now?

A. Yes, sir, I would consider this just as much.

Q. I will show that to the jury. (Shows Plaintiff's Exhibit No. 7 to the jury.) I will ask you if that is not the practical and perfectly natural position of that foot in a person lying down or reclining.

A. Well, I know there was contraction then because I saw it.

281      Q. Is not that a perfectly natural position of the foot, with the person lying down?

[307]

A. It is the same position that he has now.

Q. Please answer the question.

A. Yes, a natural position of the foot lying down, the tendon is in contraction; that is just the way that is.

WITNESS.—(Continuing.) In addition to being in the position you have described, that foot is inverted to some extent. Scar tissue causes that inversion. Inversion is a drawing in. Scar tissue causes

(Testimony of Dr. George M. Gardner.)

that inversion by contraction, it is pulled out over to the direction of least resistance. The natural foot is pulled over in this direction, is inverted,  
281 by some tendons there that pull. The tendons are not destroyed up in the leg, they are destroyed right there in the scar tissue. That motion in that foot is produced by tendons and may be inverted or everted. It is inverted by the tendons pulling on the inside and everted by the tendons pulling on the outside.

Mr. CANNON.—Q. There is something pulling on the inside to produce that inversion?

A. The tendons involved in the scar tissue can pull it in that way.

Q. The scar tissue is not strong enough to  
281 pull a foot out of position in that way, is it?

A. Yes, sir; it is; the scar tissue is extremely strong.

Q. You say then that contraction was really present at the time represented by that picture?

A. I would not want to say it was exactly as it is now, but it was in contraction.

Q. Is this the consensus of surgical opinion with reference to whether or not this talipes equinas can be prevented or not; congenital deformity cannot be anticipated or prevented; acquired deformity is an evidence that protective treatment has [308] been neglected; it is a result, therefore, that may  
284 be foreseen and prevented, is that correct?

A. That is not true in all cases, no, sir.

WITNESS.—(Continuing.) To certain cases of talipes equinas that would be true, very true but



(Testimony of Dr. George M. Gardner.)

not in this case. I didn't consult with anybody on that subject, but it was absolutely impossible to continue with the methods, regardless of authorities. I like authorities when it is feasible; you will find many exceptions. It is not possible for him to put his foot on the ground while in an erect position to bear pressure.

Mr. CANNON.—Q. Would you say with  
285 the lengthened tendon, which you admit would drop the heel, that he would not be able to put that foot on the ground while standing in an erect position?

A. If you tear all the tissues away, tear away certain tissues, you can; you can put his foot on the ground; you can cut his foot off in the center and flatten it out; and you can cut the tendon Achilles, and cut all the ligaments in his foot, if you wanted to; you could straighten it out. I could straighten his foot out, yes—that is the way it appears to me.

Q. I am not asking you that; I am asking  
286 you about a simple proceeding, which you have said is a recognized method of surgery, and proper. Now, by that proper method—not by the methods you have suggested that you could do if you wanted to, but by a proper method, would he not be able to put his foot to the ground?

A. That might drop his foot, but if it did, I believe it would do him more injury than good.

Q. So you have said before; but I am asking  
287 you now whether you do not modify your statement made in direct examination, [309]

(Testimony of Dr. George M. Gardner.)

that he never would be able to put his foot on the ground?

A. Well, I will answer that question by saying that if the ankle joint was not affected, that the heel would drop to the ground.

Q. It would drop to the ground?

A. It would drop to the ground.

Q. It would drop to the ground then, by the operation of the ankle joint, which is intact, wouldn't it?

A. Well, we will say that it would drop to the ground.

Q. Let us go one step farther than dropping  
288 to the ground; it would drop to the ground by the use of that joint, wouldn't it, which is there? A. If it is not ankylosed any, yes.

Q. It is is not ankylosed? A. Yes.

Q. And if it is ankylosed, it was because that operation was not performed a long time ago, isn't it, before the bone became ankylosed? A. No.

Q. Now, your regular treatment of this patient ceased in about three months; this accident happened something like two years and a half ago; you have had, therefore, two years and a quarter within which  
289 to see if you could by some operative measures help that foot, haven't you?

A. I have not been treating him, only in suggestion as to what he should do with that foot.

Q. You have given him such treatment as was necessary from time to time, haven't you?

A. Yes.

Q. And you have had the foot under observation, therefore, haven't you? A. Yes.



(Testimony of Dr. George M. Gardner.)

Q. So that you have had that period of time within which to suggest some of these operative measures we have been mentioning here to-day, or some others, haven't you? [310]

A. Yes; I have always told him to exercise it  
290 just as hard as possible; to try and see if it was possible to get that tendon down, and also to flatten his foot; but it was impossible, has been impossible. I have had him rub it, and rub the scar tissue with oils, continuously do it, but it doesn't do any good.

Q. It would be a good thing to get the tendon down?

A. A good thing, yes; it would be a lovely thing if he could get his foot action.

Q. You say you have advised him to get that  
291 tendon down; now you know how to get that tendon down, don't you, without exercise?

A. He exercises it, and he doesn't get it down.

Q. But you know how by a simple operation, which you concede to be proper; you know how to get it down, don't you, and thus aid him in his exercise?

A. I don't think it would aid him, I think it would do him harm, if he was to have it done.

WITNESS.—(Continuing.) These burns that I speak of in the upper part of the body are of the first, second and third degree. A first degree  
292 burn is one that takes off the upper portion of the skin, the epithelial portion; a second degree burn is one that has gone still deeper, and

(Testimony of Dr. George M. Gardner.)

taken away some of the skin; and a third degree burn would indicate having gone through the skin, or more. The skin in its ordinary division is composed of the surface skin, or outside skin, called the epidermis, and the skin lying underneath, which is called the cutis vera, or real skin. This outside skin

is the kind that we scratch off, or that forms  
293 into a blister sometimes, very thin. A burn

of the first degree is one that merely affects that thin outside skin. A burn of the second degree is one that goes to some extent within the real skin, and a burn of the third degree is one that burns through the real skin, or more, from [311] there

on. There was a place on the back there, that was a third degree burn, and within the third degree burn is still another deeper burn, a circumscribed area. There is one burn that is very deep, the burn

on the back. That was a third degree burn,

294 that burned down to the shoulder blade. That

whole burn covered the shoulder blade, that was the worst third degree burn on the back. The

others were very much smaller and were around the shoulder, they were circumscribed burns, the diameter of an inch or an inch and a half, is the largest one, as I remember it now. When the patient was

brought into my care he had some clothing on. I believe he had his undershirt on. I didn't pay any attention to those garments to see what area of burning there was in them. I could not tell

whether or not these garments had caught  
295 fire, and had burned partly away, while the patient was insensible after the accident, or



(Testimony of Dr. George M. Gardner.)

anything of that kind. The character of the burns would not indicate it. I didn't pay any particular attention to the shirts themselves.

Redirect Examination by Mr. CURLER.

To lengthen the tendon Achilles a surgical operation will be necessary, necessitating a period of non-use of the leg or of the foot. It would be attended by pain or suffering. If you cut off his foot it would

necessitate a surgical operation attended by  
296 pain or suffering. It would be pretty severe.

Physicians don't do either of those things for nothing if they can get out of it. Either of those operations would be attended with danger. The removal of the foot would be attended by a considerable amount of danger. There is always a mortality in those things. During the three months I was attending Mr. Sheaff, during the inflamed condition of the foot, it would have been a terrible thing if it had been touched in that condition; infection would absolutely have set in. There was [312] infection of that leg during this time. There was local infection from the absorption of deleterious material there, and burnt material, to the extent that his leg was inflamed—swollen—  
297 above his knee about two or three inches. That lasted about three weeks. That was a local blood poisoning, a local infection.

Mr. CANNON.—With respect to the mortality table which counsel asks me as to whether they will be required to lay any foundation; I don't care to insist upon any foundation as to the proof of the

(Testimony of Dr. George M. Gardner.)

table. It may be offered subject to my objection, without laying any foundation. As to another mat-

ter concerning which counsel desires to offer  
298 proof, namely, the amount which would be necessary to purchase an annuity at the age of twenty-six years, I have no objection to make to the correctness of the figures that are offered, and will not require any computations to verify the figures, but I have certain objections to offer to the testimony itself when counsel makes his offer.

The COURT.—The objection will not be as to the correctness of the figures, as I understand, but whether the testimony is admissible—no matter how conclusive the proof, the question is whether the testimony is admissible.

299 Mr. CANNON.—That is the idea. I don't want to put counsel to the trouble of laying any foundation.

The COURT.—You are perfectly willing to admit the testimony is correct, provided it is material?

Mr. CANNON.—That is the idea.

Mr. CURLER.—Then we offer, if your Honor please, the mortality table, the American Mortality table, and particularly, the expectancy table, insured lives, constructed from the mortality table, and found on page 482 of the Book, designated "Blue Book, Rates and Guarantees" of the Equitable Life  
[313] Assurance Society, being the same in all societies; and particularly that portion which shows the expectancy of life of a man twenty-six  
300 years of age.

Mr. CANNON.—We object to this, if your



(Testimony of Dr. George M. Gardner.)

Honor please, on the ground it is incompetent, irrelevant and immaterial; that there is nothing in the complaint which would raise an issue with respect to the expectancy of life of the plaintiff; that there is no allegation in the complaint with respect to earnings—capacity of the plaintiff to earn the amount he had been earning, what he was earning at the time of his accident; and no claim in the complaint for lost earnings after accident, up to the  
301 present time, or at any time in the future; that this character of testimony can only be relevant as being some evidence which the jury may take into consideration, and give whatever weight they determine it is entitled to, or none at all, as bearing upon the loss of future earnings on the part of the plaintiff; and there is no issue made in this complaint that I have been able to discover as to any loss of future earnings, or any loss of past earnings.

Mr. CANNON.—I would like to add also to my objection that these mortality tables are not ad-  
302 missible at all on a case of personal injuries, except in cases where there is a total incapacity to labor; where the evidence shows there is any capacity to labor, then they are not admissible.

The COURT.—Is that all?

Mr. CURLER.—I offer the Annuity Table, found on page 484.

The COURT.—And you offer also the table of “Expectancy of Life.”

Mr. CANNON.—We make the same objection on each and all of the grounds stated to the offer of

(Testimony of Dr. George M. Gardner.)

the Annuity Table. This is the first time in my experience a table like this has [314] been  
303 offered; they generally content themselves with the offer of the Expectancy Table.

Mr. CURLER.—I would like, if there is any question in the Court's mind on this subject, to produce some authorities.

The COURT.—Very well.

The COURT.—With reference to those annuity tables and the expectancy of life table, the annuity table will not be admitted, but the table of the expectancy of life will be. There is no objection made to that as to its correctness?

Mr. CANNON.—No, I did not require counsel to prove any foundation for its admissibility.

Mr. CURLER.—If your Honor please, I  
304 have mislaid the only table I have. Possibly counsel will admit that the expectancy of life of a man twenty-six years old is 38.1 years?

Mr. CANNON.—I think that is what it is. We note an exception to the ruling of the Court.

The COURT.—Let the exception be noted.

The action of the Court in allowing the Table of Life Expectancy to be admitted in evidence is here assigned as

### **Error No. 26.**

**[Testimony of Charles H. Stone, for Plaintiff.]**

Mr. CHARLES H. STONE, produced as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

305 Direct Examination By Mr. CURLER.

My name is Charles H. Stone. I am Sar-



(Testimony of Charles H. Stone.)

geant of State Police. I am principally engaged in the Identification Bureau. The duties of the Identification Bureau are to measure prisoners, take fingerprints, file them and compare the record. I have seen the plaintiff before at State Police Headquarters today. I made measurements of Mr. Sheaff. They were made [315] on the measuring board used by the State Police. He was dressed as

306 he is now, with the exception that he had on a high-top boot on his left foot and his trunk was bare. I measured the height of each shoulder and his height from the top of his head. I measured to a scar on the top of each shoulder. Mr. Sheaff stood on the measuring-board erect to his full height. It was the natural position of a man being measured for his height. His height was six feet, six and three-sixteenths inches. The height of the highest scar on the right shoulder was five feet, six and seven-eighths inches. The height of the highest scar on the left shoulder was five feet, seven inches.

Those were all the measurements I took.

307 Cross-examination by Mr. CANNON.

I made the measurements of the upper part of the body on the bare trunk. I made no measurement of the width of the shoulders from outside tip to outside tip. His back measures seventeen inches. From the extreme outside point of the shoulder across about the middle of the back to the extreme outside of the arms, with the arms at the sides—from about the middle of the back to the extreme outside is twenty-one inches. Across the hips with

(Testimony of Charles H. Stone.)

the arms at the sides to the outside is twenty-  
308 two inches. This measurement, as to the  
height of the shoulders from the ground was  
made with his shoulder in the natural position.  
That does not attempt to include any natural motion of raising the shoulder or either shoulder. I have never made any measurements as to the distance a person would increase that measurement by natural up-movement of the shoulder. There nearly always is a difference in the height of the two shoulders from the ground. I never measured to see how much difference, but in observing prisoners we measure we frequently notice that one shoulder is  
higher than the other.

309 Mr. CURLER.—We desire to prove that the  
shoe that [316] the plaintiff wore when he  
was measured by Mr. Stone was the same shoe that  
he wore on his left foot the day of the accident, and  
that it is in the identical condition now that it was  
at that time; in other words that it has not been  
worn since that day.

Mr. CANNON.—If it is stated as a fact, I will not  
object to it on that ground, but simply object to it  
on the ground it is incompetent and irrelevant.

310 The COURT.—Then it is admitted to be  
true, provided it is competent.

Mr. CANNON.—Provided it is relevant, material  
and competent.

The COURT.—Well, your objection is overruled,  
and it will be admitted.

Mr. CANNON.—We note an exception.



(Testimony of Charles H. Stone.)

The action of the Court in admitting said evidence is here assigned as

**Error No. 27.**

(Plaintiff thereupon rested.)

Mr. CANNON.—If the Court please, we move in this case for a nonsuit, and for a peremptory instruction to the jury, requiring and directing the jury to return a verdict for the defendant, on the following grounds:

311       1. That the complaint fails to state a cause of action.

2. That the evidence fails to prove the material allegations of the complaint.

3. That the evidence fails to show that the lightning-arrester described in the complaint and in the evidence, was defective in the particulars alleged in the complaint, or any of them, or in any particular whatsoever, or defectively built or constructed, or maintained, or that plaintiff was injured [317] by or through any such defect.

4. That the evidence fails to show that the defendant put the plaintiff at dangerous work, or that plaintiff was inexperienced in the work at  
312       which he was placed, or ignorant of the dangers thereof, or that defendant knew, or ought to have known, of plaintiff's ignorance, or inexperience, or that plaintiff was placed at any such work, without any or sufficient warning or instruction, or that plaintiff was injured by or through any of such matters and things.

5. The evidence fails to show that plaintiff's in-

(Testimony of Charles H. Stone.)

juries were proximately caused by or through any defect or defects in the lightning-arrester, or in the construction or maintenance thereof.

6. The evidence fails to show that the plaintiff's injuries were proximately caused by any act  
313 or omission of the defendant in setting plaintiff at work, or directing the work at the time and place complained of, or in failing to warn him as to the dangers thereof, or in failing to instruct him as to his duties, or how to avoid the dangers thereof.

7. The evidence fails to show that plaintiff's injuries were proximately caused by the negligence alleged in the complaint, if any.

8. The evidence shows that the plaintiff's injuries were proximately caused by a separate, independent, intervening cause, for which plaintiff was alone responsible.

9. The evidence shows that the danger to  
314 which the plaintiff was exposed was incidental to his employment, and that he assumed the risk of the same, and the responsibility thereof.

10. The evidence shows that the danger to which plaintiff was exposed was an open and obvious one; that he is presumed to have known and appreciated the same, and that he [318] therefore assumed the risk thereof.

11. The evidence shows that the danger to which plaintiff was exposed was one which should have been observed and avoided by a person of plaintiff's experience, knowledge, intelligence and capacity,



(Testimony of Charles H. Stone.)

and that plaintiff therefore assumed the risk thereof.

315        12. That plaintiff was an experienced  
workman, and that the dangers to which he  
was exposed in and about the place he was set at  
work, were such only as were incidental to his em-  
ployment, and should have been observed and  
avoided by him, and that he assumed the risk  
thereof.

13. That the plaintiff did know and appreciate  
the dangers to which he was exposed, and that he  
therefore assumed the risk thereof.

14. That the plaintiff assumed the risk of the  
dangers to which he was exposed in this, to wit:  
That upon completing his work of digging  
316        the holes in question, he voluntarily chose an  
unsafe, insecure and highly dangerous way to  
leave his place of work, and the enclosure surround-  
ing the same, which way was known, or ought to  
have been known to him, to be dangerous, instead  
of a perfectly safe way, of which he fully knew.

15. That the evidence fails to show whether the  
plaintiff's injuries were caused by plaintiff's coming  
into actual contact with a live wire of the defendant,  
or by the electricity jumping from such live wire  
to plaintiff's body, while his body, or any  
317        part thereof, was within one and three-  
quarters or one and seven-eighths inches from  
such wire, or while plaintiff's body was within four  
and one-quarter or four and one-half inches from  
such live wire, or by coming into contact with or

(Testimony of Charles H. Stone.)

near the dead side of the lightning-arrester while it was carrying an overload or surge from any [319] cause, or whether there was any overload or surge, or what was the cause of such overload or surge, if any, and that, therefore, negligence of the defendant is not proved, but is merely speculative, and the causal connection between the negligence alleged, if any, and the injury, is not proved but  
318 is merely speculative.

16. That the plaintiff's injuries were proximately caused by his own contributory negligence.

17. That the plaintiff's injuries were proximately contributed to by his own negligence.

18. That the plaintiff's injuries were proximately caused or contributed to by his failure to exercise ordinary care to avoid injury to himself, by his failure to heed the warning of danger given by the fence around the lightning-arrester, and by the danger signs upon the substation door and the switch-  
319 pole, both of which were, or could have been observed by him, by the exercise of ordinary care upon his part, and by his failure to use ordinary care to keep away from the live wires in the lightning-arrester, when he knew, or ought, in the exercise of reasonable care, to have known, by the purring of the transformers, and other facts and circumstances then known to him, that said wires were alive, and carrying a high voltage; and by his voluntary action in coming into close proximity, or in contact with said live wire, when he could  
320 have departed from said enclosure by another, and perfectly safe route then known to him,



(Testimony of Charles H. Stone.)

and by his failure in other respects to exercise the care imposed on him by law in view of his age, experience, intelligence, capacity and powers of observation.

19. That the accident to the plaintiff could not have been reasonably foreseen or anticipated by the defendant.

(Argument on motion for non-suit was thereupon [320] argued by respective counsel.)

The COURT.—Gentlemen, I have not the time, and I do not think I ought to take the time to review the authorities which have been presented on  
321 this motion. While perhaps you may have thought I manifested some impatience, the argument was very interesting, and I am sorry it could not have been longer. I will indicate very briefly my reasons for denying the motion.

It is undoubtedly the rule that if there is substantial evidence supporting every material point of the plaintiff's case, I must deny the motion. It is not my duty to weigh the testimony, I am simply to determine whether or not there is testimony.

As to the defendant's negligence, there is testimony showing that the construction was  
322 dangerous, and also showing that the defendant knew it. There is also testimony which tends to show that the plaintiff assumed this risk, and also that there was contributory negligence on his part. It appears to me there is a conflict in the testimony on both these points.

A servant assumes the ordinary and obvious risks

(Testimony of Charles H. Stone.)

of his employment; and also such risks as, under all the circumstances, including his experience, knowledge and means of knowledge, he ought to have known. The same measure of knowledge and appreciation must be applied in determining the question of contributory negligence. If the plaintiff  
323 was negligent, but was not aware of the danger, it cannot be attributed to him as contributory negligence, unless under all the circumstances, he ought to have known and appreciated the danger.

The plaintiff has had considerable experience in electricity—there is no question about that; it seems [321] strange this accident occurred; but we must remember that we are looking at the event after it has occurred. In order to determine what he should have done, what was prudent under all the circumstances, and what he ought to have known and appreciated, we must place ourselves in the  
324 condition as it existed before the accident.

When plaintiff tied the strings on the dead arms of the arrester in order to ascertain the places to dig holes for the cement blocks, he was doing rather a reckless thing. If there had been a surge on the wires, or an excessive quantity of electricity, he would undoubtedly have received a shock. This indicated that he did not appreciate the dangers of the situation.

When this structure was first built, four of the employees of the company, including Mr. Halpenny, were there and this very feature of the structure



(Testimony of Charles H. Stone.)

was discussed. Now, Mr. Halpenny either  
325 did not appreciate the danger, or else he was  
simply inclined to recklessly and wantonly  
jeopardize the lives and limbs of the employees of  
the company. I cannot assume the latter alternative  
to be true. If a man of Mr. Halpenny's experience  
—he was the electrician in charge of the work—  
after his attention had been called to it, failed to ap-  
preciate the danger of the structure, there is some  
reason to believe that Mr. Sheaff did not appreciate  
the danger either.

Now, understand, I am not weighing the testimony  
but it seems to me there is testimony on both  
326 sides of the controversy as to assumption of  
risk, and also as to contributory negligence.  
For this reason the motion is denied.

Mr. CANNON.—Your Honor will allow us an  
exception?

The COURT.—Certainly.

The action of the Court in denying defendant's  
[322] motion for nonsuit is here assigned as

**Error No. 28.**

Mr. CANNON.—There was a point made on the  
argument as to the sufficiency of the plea of contrib-  
utory negligence. I would like at this time to amend  
the answer by setting up the paragraph in practi-  
cally the same language as it appears here, where  
the words "caused by" are used, repeat that,  
327 and say "were proximately contributed to by  
his own fault"; in other words, to amend the  
answer as follows:

(Testimony of Charles H. Stone.)

“As a separate answer and defense, this defendant alleges that the accident and injuries resulting therefrom to the plaintiff, if any he received, were proximately contributed to by his own fault, carelessness and negligence, in failing to exercise his natural faculties in a reasonable way to avoid injury, and in failing to conduct himself in a reasonably careful and prudent manner while engaged in and about his said employment, and in going to and from his said employment.”

The COURT.—Is there any objection?

328 Mr. GEDNEY.—We object to the amendment upon the ground that even the amendment offered would not make a plea of contributory negligence; and upon the further ground that it changes in all aspects the issues in the case. Upon the further ground that we were prepared to meet the issues as made by the pleadings at the time of the commencement of the case; and were not prepared to meet this issue.

The COURT.—In what respect are you not prepared to meet the issue of contributory negligence?

Mr. GEDNEY.—In regard to the proving,  
329 for instance, of that sign, as to whether or not it was there; and also the question as to what the plaintiff knew about electricity before this time; and in that connection we would require evidence from Millers, where he worked, as to what he did [323] there, and what he knew about electricity.

The COURT.—Didn't you introduce testimony upon that point; and didn't you deny that he knew



(Testimony of Charles H. Stone.)

anything about the dangers of that?

Mr. GEDNEY.—The complaint denies it.

The COURT.—In order to maintain your complaint, it seems to me you are bound to prove that.

I will allow the amendment. If it were  
330 injecting an entirely new defense into the case, one of which you had had no warning, it would present another phase, and an entirely different question. If you are taken unawares by this, you will have abundant opportunity to present testimony, if we have to continue the case, in which event I would want a showing as to how material your necessities were.

Mr. CANNON.—The order is made allowing the amendment?

The COURT.—The order is made.

Mr. CANNON.—Will it be necessary under  
331 the rule, to file a formal amendment to the pleadings, or will it be considered as filed, having been entered in the stenographer's minutes?

Mr. GEDNEY.—I suggest that you have the stenographer write it off, and give us a copy.

Mr. CANNON.—And we can file one.

The COURT.—And it can be pasted on the original.

**[Testimony of George L. Perrin, for Defendant.]**

Mr. GEORGE L. PERRIN, produced as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. CANNON.

I reside at Fairview, Nevada. I am an electri-

(Testimony of George L. Perrin.)

cian. I was employed at Fairview, Nevada, on the eighteenth of July, 1911. I was electrician of the Nevada Hills Mining Company. [324] On 332 the eighteenth day of July, 1911, I was in the Nevada Hills substation most of the time.

The Nevada Hills substation is about four hundred feet south of the substation of the Pacific Power Company. I know the plaintiff in this case, and I knew him on the eighteenth day of July, 1911. I saw him on the morning of the eighteenth of July, 1911, possibly eight o'clock, perhaps. I saw him at the Nevada Hills substation, in the station. I was

conversing with him in the substation itself 333 that morning not to exceed fifteen minutes.

The transformers were operating at that time. I am acquainted with the sound made by the operation of the transformers. That sound was audible on that morning. It was present at the time Mr. Sheaff was in the substation with me at that time. After conversing with Mr. Sheaff for about fifteen minutes that morning, I believe he went back to the Pacific Power substation. I saw him once during the morning at a later time. When I saw him he was digging holes. I saw him from the Nevada Hills sub. After seeing him working digging 334 holes, I did not see him later in the day until after he was burned, after the accident. I saw him about between twelve and twelve-thirty. I was at the substation at the Pacific Power Company between twelve and twelve-thirty. I went in the vicinity of the lightning-arrester when I went up to



(Testimony of George L. Perrin.)

the substation at that time. When I went up to the substation at that time, I went in the vicinity of the lightning-arrester. I went around to the north side of the lightning-arrester on the north side of  
335 the building. I just walked right in to the enclosure. The wires on the north side were down and the wires on the south side were up. I noticed that ground in the neighborhood of this point, number one.

Mr. CANNON.—Q. What did you see on the ground in that vicinity?

A. Why, it would look as though a man had been laying [325] there.

Q. Did you see the impression of anything on the ground?

A. Impression of a man's body, as it seemed to be.

Q. I wish you would come down to this  
336 model, and take a piece of chalk, and mark on the model about the place where you saw that impression on the ground. (Witness draws on model.)

Q. The figure you have drawn then, a small rectangular figure, right in here—we will mark that “X.” On the south side of the building what was there, if anything, Mr. Perrin?

A. Five or six coils of wire, and a few cross-arms.

Q. And a few cross-arms? A. Yes, sir.

WITNESS.—(Continuing.) Those coils of wire and cross-arms furnished a sort of obstruction  
337 to the passage at that side of the substation to that side, the south side of the substation.

(Testimony of George L. Perrin.)

On the north side of the substation there was nothing at all; the way was clear there. I am certain I went down on the north side, and that the wires were down on the north side.

Cross-examination by Mr. GEDNEY.

There were four wires on the north side. All four wires were down. They were detached from the corner of the building. They had been taken loose by being loosened up from the staples that held them to the side of the building. The staples were not pulled. These wires were attached right to  
338 the corner of the building. From the corner of the building these wires ran to the corner of the enclosure. The enclosure was not built exactly as it is here. This corner ran out possibly eight feet—yes, it was built exactly as that is at that time. The two posts that I see made the corner posts that way. The wires did not run from the corner of the building [326] straight to the posts of the switch. There were two posts in there.  
339 There were four wires on it. I could not tell from the marks on the ground which way the man's head was lying. The imprint of the man's body was there to show me by marks whether he was lying that way or at right angles with the building. I examined the horn of that lightning-arrester. I just looked at it. I saw a little spot on the point of the live horn, being horn number one. It was a quarter-inch pipe with a coupling on it, and the edge of the coupling nearest the north side of the building



(Testimony of George L. Perrin.)

showed a small spot, perhaps—oh, twice as  
330 large as a lead pencil. It looked like a piece  
of iron or a piece of metal would look if it had  
an arc drawn from it. In my opinion, an arc had  
been drawn from that. That piece of coupling that  
was on there was about three-sixteenths of an inch  
on the outside of the pipe. If the horn were hori-  
zontal, at the point of that coupling would be three-  
sixteenths of an inch lower than the rest of the pipe.  
We had volt-meters on the wire there. They were  
not recording volt-meters. If there is a surge  
331 upon the line, there is a corresponding increase  
in the buzz of the transformers. If the voltage  
was high the transformers would give a louder noise.  
The average load carried there in voltage, as shown  
by our volt-meter on the secondary side, is one hun-  
dred and ten. When that was running at a steady  
one hundred and ten, you could hear the transform-  
ers about fifty feet away. You could hear them for  
fifty feet on the outside of the building when the  
doors were closed through the building. If there  
was a surge on the line and my volt-meter ran  
332 up to about one hundred and forty, it would  
make a louder noise. I didn't notice any  
surges on that line. It was not my business to no-  
tice that meter. If there had been a surge on the  
line, where that would have run above one hundred  
and [327] ten, I would very likely have noticed  
it. The color of the coupling was a sort of a light  
gray. It was different in color from the rest of the  
pipe. The small point that I noticed was of light

(Testimony of George L. Perrin.)

gray color, while the other was the ordinary color of  
iron rust. This pipe was rusty, all except  
333 the spot, that spot was about twice the size of  
the point of a lead pencil. The color of those  
pipes was a sort of brownish red, like rust. That  
point would not be as large as a pea, it would be  
about twice the size of a lead pencil point—about  
twice the size of the lead in a lead pencil. Those  
pipes were not of galvanized iron. I know they  
were of black iron.

**[Testimony of W. H. Block, for Defendant.]**

Mr. W. H. BLOCK, produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. CANNON.

334 My name is W. H. Block. I reside at  
Millers, Esmeralda County, Nevada. I am  
foreman of the Desert Power and Mill Company at  
Millers, Nevada, and that Company is engaged in  
milling ores from the Tonopah Mine of the Tonopah  
Mining Company. I have been around the  
power-house of the Esmeralda Power Company a  
great deal. The machinery there has never been  
changed. In the early part of 1906 there were three  
generators, and later on there was the fourth gener-  
ator installed; that was in 1906 that was in-  
335 stalled. The electric machinery in that power-  
house consisted of three direct connected  
generators, McIntosh-Seymour Company's engines,  
each two hundred and fifty kilowatts, twenty-two



(Testimony of W. H. Block.)

hundred volts, sixty-five amperes per terminal, three-phase, three thousand alternations, twenty-five cycle, one hundred and fifty revolutions per minute. One direct connected generator, McIntosh-Seymour Company's engine; three hundred kilowatt, twenty-two hundred volts, seventy-eight and nine-tenths amperes per [328] terminal; three-phase, three thousand alternations, twenty-five cycle, one hundred and fifty revolutions per minute. A generator is a machine used for generating an electrical cur-

rent, as I would describe it. Those gener-  
336 ators in the power-house were attached to Mc-

Intosh-Seymour Company engines. Those were steam engines. The steam engine caused the generator to revolve and generate the electric current. Those generators were directly connected with the steam engines; the generator was on the main shaft of the engine next to the fly-wheel. The dimensions of those electric generators, I would say was about eight or ten feet in diameter, and possibly twenty-two or twenty-four inches wide, and that would include the fields and arms—the fields, of course, were the larger part. The armature of these

generators revolves. The diameter of these  
337 armatures was about six feet, I believe.

There is a bearing on one side of the generator, and that would be on the west side, which is quite close to the generator; but the bearing on the other side is clear of the fly-wheel, so it would be some distance from the generator, if that is definite enough. There was a bearing on the west side of the

(Testimony of W. H. Block.)

armature, and it was up some distance above the floor. I would say the bearing itself was perhaps five feet above the floor, but the oil pots and glass oilers were even higher, possibly six feet; in fact, they were so high above the floor there was a step built on the framework of the bearing, so a man could step up there to oil this oil-pot and the glass oilers; and in connection with that, there was a guard between the casting for the bearing and the generator, made of sheet iron, but it did not extend to the top of the generators, it was about eighteen inches or two feet of the generator armature and fields exposed above this guard. In order to oil those bearings a man would have to step up on this step that [329] was built for that purpose. Where that would bring him so far as these revolving armatures were concerned would depend on the height of the man, and on the man; it might bring just his head and shoulders—just possibly a part of his shoulder and his head, above this guard; and a taller man, it would bring more than his head and shoulders. The body of a man six feet six inches would have considerable more than his head and shoulders above this guard, I speak of. Just how much it would be hard to say, but nearly to his elbow—not right to his elbow. Assuming the position of the man in that place oiling those generators, there would be nothing but air space between that upper part of his body and this revolving armature. In 1899—fourteen years ago, I was employed for six months in an elec-



(Testimony of W. H. Block.)

trical plant in Salt Lake—Salt Lake Electrical Supply Company; and since 1899, I have worked in a number of plants, mining and mill plants, and  
341 all of them have been equipped with electrical machinery; and having charge of the plant at Millers, and having no more than one electrician, I naturally have to look after a portion of that work myself, when the electrician is gone. Well, for the past three years I have become familiar with the line of work; that is, when I say “familiar,” I don’t mean to say I am an expert, or anything like that, but I have had to become familiar enough with it, so I could take care of the ordinary currents, or ordinary trouble that would occur there. Accord-  
342 ing to my knowledge of electricity, if a man came in contact with twenty-two hundred volts against a ground such as he would come in contact there in standing on this step, the base of the engine being grounded, that it would kill a man almost instantly, or pass through his body. He certainly would if he had come in contact with the exposed fields. [330]

Cross-examination by Mr. GEDNEY.

This was a revolving armature in that generator. Any man with eyes could see it flying around there.

Naturally, any man could appreciate the danger of that. If it were standing still, there  
343 was not any danger. It wasn’t generating any current when it was standing still. The purpose of this sheet-iron guard, extending part way past the generator, was to protect a man that

(Testimony of P. W. Greenleaf.)

naturally would go in there to oil the bearings. It protected the lower part, not the upper part of the generator.

**[Testimony of P. W. Greenleaf, for Defendant.]**

Mr. P. W. GREENLEAF, produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. CANNON.

I reside at Riverside, California. I am superintendent of construction with the Southern Sierra Power Company; electrician by occupation,  
344 working in construction work for the Southern Sierra Power Company in the southern part of California. I have been engaged in the business of electricity about eleven years. I was operator in different power-houses. I have been operator in the Municipal Plant in Indianapolis, Indiana, and the Ontario Power Company's plant at Ontario, California; and in two of the different plants of the Pacific Light and Power Company, one, the Azusa, and another one in San Antone Canyon, above the Ontario Power Plant. Then with the Nevada-California Power Company, I operated in two of their  
345 different power plants; then with the Pacific Power Company; then with the Southern Sierra Power Company. The recital of those places I have been operating power plants cover practically the eleven years I have spoken about. I have done construction work during that time. At the time with the Pacific Power Company most of



(Testimony of P. W. Greenleaf.)

my work was construction [331] work; and with the Southern Sierra Power Company, it was all construction work; I did quite a little construction work with the Pacific Light and Power Company, and also with the Ontario Power Company. About a third of that eleven years, I have been engaged in electrical construction work entirely in putting in substations and power-houses, and any electrical apparatus that would come in power-house work to be installed. I am acquainted with the contrivance known as a lightning-arrester. I have been acquainted with lightning-arresters practically eleven years. I have installed, or assisted in the installation of lightning-arresters, what is known as a resistance lightning-arrester, and the electrolytic lightning-arrester, and the horn gap lightning-arrester. The type of lightning-arrester represented in the model before me is what we call a horn gap arrester. Some of the places in which I have either installed, or assisted in installing lightning-arresters are Azusa; Nevada-California Power Company at Bishop; and with the Pacific Power Company at Bodie and at Fairview; and with the Southern Sierra Power Company at Elsinore, or not at Elsinore, at Corona; at Paris, and San Jacinto. I have seen other lightning-arresters at other plants in operation. California, Nevada and Indiana, have been the principal points where I have taken most interest in looking at them; I have noticed them when travelling through the

(Testimony of P. W. Greenleaf.)

country at various points, but the places I  
348 have taken particular notice of them would be  
Nevada, California and Indiana. I have seen  
lightning-arresters, and the positions in which they  
are placed, and the manner of their construction in  
those three states. I can give you the names of some  
of the power companies. There is the Edison Power  
Company; the Pacific Light and Power Company,  
and the P. E. Power Company, all of Los Angeles;  
and the Nevada-California Power Company and  
[332] the Southern Sierra Power Company.  
Lightning-arresters are generally placed at the most  
convenient point, so they will take care of the ap-  
paratus inside of the building that they are  
349 to protect. In most instances they have been  
on the ground, and a few places I have seen  
them located on the roofs, where they entered the  
building on top of a flat roof; where they have a flat  
place to build their structure, they would build it on  
the roof, where they go in the building. I have  
never seen any of the large horn gap arresters on a  
high pole; I have seen lower voltage arresters on the  
high poles, but never saw any high voltage  
350 arresters on high poles. It would be hard to  
tell in how many instances I have seen even a  
small lightning-arrester placed on a high pole, be-  
cause you take the low voltages, the arresters are  
very small, only about that wide to about that long  
(showing); in that instance they are always placed  
on the cross-arm right at the pole, and you find those  
in numerous places all over the country. Outside



(Testimony of P. W. Greenleaf.)

of low voltage arresters, I have seen only one high voltage arrester that I remember placed on a high pole. That was one I put in myself at the  
351 power-house at Bodie. It was an old electrolytic arrester, and we had a snowslide there, it took out the arrester, and completely demolished it, and the horns were of such a type they had to be fastened on the cross-arms; we used the same horns on the old electrolytic arrester; and it was more convenient to mount it on the pole than to put it on the ground, and where that came from the building there was approximately thirty-five feet, where that went out of the building; and to make the connections work out nicely, it was more convenient to put it up on a pole that way. A  
352 lightning-arrester should be placed as near as it could be to the building, from where the wires enter the building, so that you can do away with having any angles from your connection [333] from your line to your arrester. The difficulty about building it in a place where you have angles is on account of lightning; if you make an arc, lightning will follow an arc, and if you have a sharp angle, it is likely to jump off at the angle that way, and  
353 instead of going to the ground, follow the line on into the building to the transformers or apparatus inside of the building, and burn out the transformers, and liable to ground and put the high voltage on the whole system everywhere. It is liable to let the potential off the main line, if your transformers burn out, and the pressure on the main line is

(Testimony of P. W. Greenleaf.)

liable to go on through in your secondary line, if you  
burn out your coils in your transformers. If that  
lightning should come to the Fairview power-house  
and destroy or injure the transformers in the  
354 way I have mentioned that might carry a high  
current into the transformer of the Nevada  
Hills people and likewise burn out those transform-  
ers and carry the high voltage into the mills of the  
Nevada mine itself. The results would be very dan-  
gerous, make all the apparatus very dangerous for  
anybody to work around it. That might be a result  
of having improper angles. If this lightning-ar-  
rester at Fairview, represented in this model, were  
built down a hill on either side here, you would have  
to turn it at right angle there to get it out that way;  
every sharp corner you would make, would  
355 make it so it would not be near so effective as  
it would be right direct under the line. In my  
opinion, the lightning-arrester at Fairview, and rep-  
resented in this model, was properly placed. I would  
say it was placed at a proper elevation. It could  
not be placed any higher in that one position there,  
or it would conflict with the—the arms there are  
built on a bow that way to break the arc if the light-  
ning would go over the horn gap there; the arc  
naturally rises on a bow, and as it comes  
356 [334] up, the bows are put there, so it will  
break the arc in two, and if they were any  
higher up the arc would be liable to fly up into the  
main line. If it would fly up into the main line, it is  
hard to tell what it would do. It is liable to cause



(Testimony of P. W. Greenleaf.)

damage. The lightning would not be carried off into the ground under those circumstances.

Mr. CANNON.—Q. What is the difference between the horn gap lightning-arrester, and the other two that you have described?

A. The electrolytic lightning-arrester is an  
357 arrester that has a resistance, it is similar to the horn gap arrester; they have a horn gap in conjunction with the tank, but the tank takes the place of the concrete blocks in this, and the horns don't have to be as large as they are here, and the gap does not have to be so great; they have aluminum cones with the electro light between each cone, then these cones are submerged into a tank of oil, then the connection comes from the top and goes clear down through the cone to the ground, so it has all the resistance of these cones and the electro  
358 light between the horn gap and the ground.

WITNESS.—(Continuing.) They are very similar in principle as this horn gap; the grounding is the same. The three tanks are grounded together to the ground; and then there is—instead of having a resistance of the concrete blocks in series with the ground, they have the resistance of these aluminum cones, stacked in a tank of oil. That concrete block is supposed to increase the resistance from that horn to the ground, so that the horn gaps won't carry such a heavy current to the ground when they do discharge. The concrete blocks in this lightning-  
359 arrester operate to do the same thing that the oil tank does in the case of the electrolytic

(Testimony of P. W. Greenleaf.)

arrester. There is no practical difference in the two arresters, with the exception [335] that the concrete block does not build up resistance, it has the same resistance all the time, and this electrolight in the aluminum cones in the tank of oil, as the current goes over there, it builds up and increases the resistance until the arc is broken. The other style of lightning-arrester has a set of resistance wires with

spark gaps, and the gaps, instead of being a  
360 horn gap that way, they are brass buttons, set,

we will say one-eighth of an inch—instead of having three or four inches for the gap, they divide that up into eighth inches; instead of having one gap, they break it up into smaller gaps, and put a set of buttons down, and have the resistance wire between that and the ground. In all of these lightning-arresters I have seen, there are exposed wires close to the ground. In my observation with all the Com-

panies I have worked with, as to the measures  
361 taken to protect people from those lightning-arresters, generally, there is a fence around them, and danger signs put up; and lots of instances they are at the back end of a building, where nobody but employees are supposed to go; but the out-door type is generally fenced in, with danger signs put up on them. In my observations that is the common practice with respect to the construction of lightning-arresters. In my experience, outside of this particular accident here in controversy, I do not

know of any accident happening with any  
362 lightning-arrester built near the ground, fenced in and danger signs on it. I have been



(Testimony of P. W. Greenleaf.)

at the lightning-arrester at Fairview. Before going there I went to Wonder first. At that time I was in the employ of the Pacific Power Company as Superintendent of the Power-house and its operations. I went to Wonder to look over the substations, and get a general idea of what kind of a load we were going to have at those two stations. I went to look over the substations at both Wonder and Fairview [336] and to be there when we put the juice on the line when we tested out the transformers.

363. When I went to Wonder there was about a week's work before we could put the juice on the line. I went to Wonder first. I know Mr. R. H. Halpenny. I met him at the Wonder substation. The Wonder substation is about three-quarters of a mile up from Wonder. I have the date that I took off my expense account (consults memorandum); I arrived at Wonder June 7th. I went to the substation June 7th. At the time I went there, the line from the Wonder substation out to the mill, 364 and the other line to the mine had not been constructed. I know the plaintiff in this action, Mr. Sheaff. I first met him at the Wonder substation on June 7th, the first day I got there. When I first met Mr. Sheaff he was standing behind the switch-board when I got to the station. He was taping up joints. By taping up joints, I mean that where they make splices in a wire, they tie two wires together, and after they have spliced the wires and have them soldered, they generally first put the rub-

(Testimony of P. W. Greenleaf.)

ber tape on, and then an oil lining tape, and  
365 then cover that with a friction tape. There  
were many wires in and about that switch-  
board at that time. I saw Mr. Sheaff engaged in do-  
ing that work. I was introduced to him at that time  
by Mr. Halpenny. I observed him in the doing of  
his work there at that time. He was doing his work  
in a good workmanlike way. I remained in the  
Wonder substation about five or six days. At the  
time I got there they were drying the transformers,  
and had been doing some work on them. They  
366 finished drying out the transformers, cooked  
the oil and finished up the connections for the  
primary side of the transformers for the sixty thou-  
sand volts while I was there. The oil is shipped in  
drums, and it is liable to have moisture in it, and if  
it has moisture in it, it is liable to cause us trouble  
when we put it in the transformer, and to keep from  
[337] having trouble in that way we generally put  
the oil in some large vessel, and heat it up by a set  
of resistance coils, by electricity to try and bring it  
up to ninety degrees centigrade heat, so as to  
367 get the moisture out. I don't remember ex-  
actly whether the coil was made before I got  
there, or after I got there; but I do remember it was  
connected up and put into use while I was there.  
We had sixty-six hundred volts coming into the  
transformer, and we used the transformer to step it  
down to, I think it was four hundred and forty volts,  
and then the resistance wire, we have to either put



(Testimony of P. W. Greenleaf.)

a greater amount or a less amount in to get the  
368 right temperature of heat to heat your oil, and  
it was fixed up on a frame so that the frame  
could be set down into the tank to heat the oil. I  
don't remember exactly how much voltage was used  
in the wires which were used in the resistance coils.  
I think it was four hundred and forty. I don't re-  
member exactly whether I saw the plaintiff, Mr.  
Sheaff, doing any work about connecting up that oil  
heater; it has been quite a while ago; but he was  
around there, and we all of us took turns in  
369 working on it, and I am pretty positive that  
he helped build the frame, and helped to put  
the wire on, and helped connect it up. There was  
wiring necessary to be done to prepare the trans-  
formers for the drying out process. They were  
dried out with sixty-six hundred volts; and they  
would be connected up with the current that came in  
on the line at that time; sixty-six hundred volts came  
in through an oil switch, and from the oil switch  
went to the transformers, so that the current would  
pass through the primary coils of the trans-  
370 formers, heat them up, and dry them out.  
Wiring had to be done to connect them up in  
that way. I think that wiring was done before I got  
there. It is the electric current that is put on the  
transformers that dries out the transformers, and  
one side of the [338] coils on the transformers  
are short-circuited, so it makes a heavy current  
through the transformers, and that cause heat, and  
causes them to rise in temperature until the moisture

(Testimony of P. W. Greenleaf.)

is all taken out of the transformers. The first day

I think there was three shifts used in drying  
371 the transformers; after that there was two  
shifts. Mr. Halpenny and I worked in the  
daytime, and Mr. Sheaff had a shift at night-time,  
and worked all night. During the time Mr. Sheaff  
was on shift, there was nobody assisting him. To  
my knowledge he was alone on the shift. He would  
have to turn the current on and off, take the read-  
ings of the temperatures, and watch and see that  
none of the insulation inside caught fire, or anything  
like that, from excessive heat. It is a common or  
occasional thing for insulation on the coils down

inside to catch fire. I have had experiences;  
372 when we dried the transformers out at the  
power-house we had that experience, the in-  
sulation caught fire; and at the time we dried the  
transformers out at Aurora we had some burns.  
During the shift that Mr. Sheaff was taking while  
this drying process was going on electric current was  
actually being used in the power-house, when he was  
there alone. He had charge of and use of that elec-  
tric current during his shift. That was turned on  
and off through the switch from the switch-board.

A person would certainly have to know the  
373 switches on the switch-board in order to turn  
that on and off. To take the temperature  
there we had thermometers inserted down between  
the coils of the transformers; we had to go up on the  
platform, back behind the transformers, and reach  
down and pull a thermometer up, and read it, and



(Testimony of P. W. Greenleaf.)

then put it back down between the coils again. If you took your readings without turning off the current you would come into close relation with live wires. We would turn the current off the board, go up there and read them, and then come down

374 [339] and turn the current back on. I think

I took several readings there myself without turning the current off at all. I don't know how Mr. Sheaff did it. I never saw him do it. I remained in Wonder five or six days. During the time I remained in Wonder the line to the Nevada Wonder Mine and the line to the Nevada Wonder mill were not constructed. From Wonder I went to Fairview. I don't distinctly remember about the trip from Wonder to Fairview, but I think I went over by myself about June 13th. I was at  
375 Fairview during the time of the construction of the lightning-arrester there. I was not at Wonder during the time of the construction of the lightning-arrester there.

Mr. CANNON.—Q. Did you take part in the construction of the lightning-arrester at Fairview?

A. Not a great deal—a little, yes, sir.

Q. Who else was working in the gang that was building the lightning-arrester at Fairview?

A. Mr. Halpenny, Mr. Sheaff, Mr. Campbell, Mr. Herring and myself, and Mr. Perrin was over around the place several times from his substation—at the Fairview substation.

WITNESS.—(Continuing.) I can re-  
376 member part of us doing some work and part of us doing some of the other work, but I don't

(Testimony of P. W. Greenleaf.)

remember distinctly what we all did all day long, it has been quite a while ago. I remember what Mr. Sheaff did in connection with that construction. He helped to run the ground wire; we put a copper plat down an old mining shaft, where we could get damp ground, and he helped run the ground wire over to that; and he was doing some work about the framework, I don't remember just distinctly what it was; I remember him being around while we was working on the framework, putting the insulators in.

377 This ground wire carried to this old mine shaft was several hundred feet long. [340] This ground wire was carried from the point of the arrester this way, over to the corner of the building, up to the corner of the building, then it was taken overhead on a pole for quite a ways, until they got the gallows frame of the shaft down there, and until they got to the water. It was carried out of here

378 through a trench. I didn't go down the shaft; Mr. Halpenny was the one that put that down the shaft; I saw him solder the ground wire to the copper plate, and carry it over the shaft, and let it down into the water in the shaft. You would call that a dead ground, they generally speak of a ground if it is a perfect ground, if you are absolutely sure of your ground, so that you know you have got an absolute ground, they generally speak of it as a dead ground. That lightning-arrester was finished before I left there, and the fence that was around it was put up before I left. The wiring, with the excep-  
379 tion of the concrete, was complete before I left. This ground that appears on here now



(Testimony of P. W. Greenleaf.)

was in. I did not place these danger signs myself. Mr. Perrin placed a danger sign on one of the poles of the switch, and on the door of the substation. I don't remember exactly what the sign said, because I have put up a good many hundred signs since then, but I do know that the word "Danger" was on it, and I think "High Voltage." If there were a surge

or an overcharge on this wire which jumped  
380 the gap, and a person should be in contact with or close to this dead wire, I don't see that anything would occur unless he was close enough to where the arc was to get just a surface burn from the arc; but if he was working on a wire that is dead-grounded, he would not receive any shock, or would not feel any effects of electricity at all, because it is grounded—a dead ground; and it makes a better

contact to the ground, being connected that  
381 way, than a man could make to the ground.

If the ground is a dead ground, [341] that would be the result, if a person came into contact with that dead wire, even though there were an overcharge. I know Mr. Campbell, Mr. Herring and Mr. Halpenny. I think I was two days and one night, or possibly two days and two nights at the Fairview substation at that time. At no time while I was working about the construction of the lightning-arrester, and in any conversation that was had among the men there, did I hear Mr. Campbell say  
382 that it was criminal negligence to construct that lightning-arrester in that way. I did not say that it was either a cheap company, or a cheap

(Testimony of P. W. Greenleaf.)

construction, or a cheap concern, or make any remark of that kind. To my memory nothing at all was said to me during that time that the lightning-arrester was being constructed, was wrong, or dangerous, or negligent, or anything of that kind. The theory upon which this lightning-arrester works is that by setting a certain distance at points above the bottom insulators there—setting the horn gaps at a certain distance, so that any lightning that would  
383 come in on the line would jump that distance, and go to the ground. The difference between lightning-arresters is a matter of difference in detail. I don't remember exactly which way the danger sign on the switch post was on; I remember there was a sign put on one of the two posts, I would not say which post it was, but if I remember rightly, it faced down towards the Nevada Hills substation. That was facing toward the south. I don't remember whether it was on the south pole or the  
384 north pole. I don't remember the exact day the power was turned on that Fairview line and the Wonder line; it was turned on about a day before I left Fairview; I remember I was up at the substation the time the power was turned on; we were in there watching the instruments on the board to see how the voltage came up when they turned the power in on the line, and we were testing out the transformers, [342] seeing that the transformers stood up to their test all right. Mr. Halpenny and myself did all that work while we were at Fairview,



(Testimony of P. W. Greenleaf.)

and I think all the rest of the boys were in the  
385 substation at the time the power was turned  
on. If you had to do the work on the arrester  
while the power was on the line, it would be safer to  
work from the ground than it would to be up on a pole.  
because a man can handle himself better working on  
the ground than he can from working off of the pole.  
If electricity were being served, say to this Fairview  
station and the Nevada Hills mill and the Nevada  
Hills Mine, the current could not be turned off  
386 at this switch for the purpose of doing any  
work, without stopping the service in the mill  
or mine. It was with the Edison Power Company  
that I saw lightning-arresters placed on the roof.  
When those lightning-arresters were placed on a flat  
roof, the tank sat right on the roof; the tanks were  
approximately from four and a half to five and a  
half feet high, and they set right on the roof, and  
the wires came in right above the tank, into a cupola  
built onto the flat roof; then they had an iron railing  
around the arrester.

387 Mr. CANNON.—How far were the live  
wires on the arrester from the roof?

A. Well, the live wires go into the top of the tank,  
or up not to exceed six feet.

WITNESS.—(Continuing.) I think there was  
danger signs placed on those, too.

Mr. CANNON.—Q. Is there any place recognized  
by people of your profession as the particular place  
where lightning-arresters must be built?

A. Well, the only exception I know of is to get

(Testimony of P. W. Greenleaf.)

them as near as you can to the apparatus that you are putting them in to protect. [343]

WITNESS.—(Continuing.) That is the  
388 rule we generally go by. There is no accepted distance from the ground at which they must be put that I know of. In all of the work that I saw the plaintiff in this action do at Wonder, the Wonder substation, and at the Fairview substation, there was nothing in the work that he did that indicated to me any incompetency or ignorance of his work. He appeared to me to be a competent man in the performance of his work. With reference to  
this process of drying out transformers; you  
389 have got to be pretty particular with the work; the transformers are pretty valuable appliances, and you have got to be mighty careful when you are drying them out, or you are liable to burn them; if you burn them that destroys the insulation between the coils, and allows them—what they generally speak of the insulation breaking down, and short-circuiting within themselves. You have got to be pretty careful about placing your transformers; there is an iron laminated core in the center, and the coils go through this core, and if you don't get your  
thermometer right down against the iron, and  
390 close to where the heat is generated, you are liable to get more heat on the coil than the thermometer would show; you have got to be very careful that you place your thermometer in the right place on these coils, to know what the temperature is. He did his work well, as far as I know. He



(Testimony of P. W. Greenleaf.)

seemed like a very bright man, I should say.

Cross-examination by Mr. CURLER.

At the present time I am working for the Southern Sierra Power Company. That is not a branch of the Pacific Power Company, or connected with it.

I am not certain as to whether the stockholders  
391      ers are the same. I think that one of the stockholders may be a stockholder in the Southern Sierra, but to my knowledge, I don't know.

The officers are not the same. The [344] purpose of those cement blocks is to increase the resistance between the horn and the ground, and is for the purpose of holding the usual voltages on the line. It was constructed for the purpose of taking up lightning, or getting rid of lightning. Sometimes the lightning will follow the line for miles before it goes

over the arrester. It is the natural function  
392      of lightning to go to the ground by the shortest course. If an ordinary bolt of lightning struck the line it would break down the insulation and go to the ground through a pole or some other way. A lightning-arrester is put in for more than one purpose. It is put in to take care of bleeding the line from induced current. Inducted electricity is a current that builds up on the line within itself. You  
393      take a line paralleling itself for a long ways, it will build up an induced current on itself.

I don't know what resonance is. I never considered inducted electricity as electricity that is inducted from the clouds lying along the line at different places.

(Testimony of P. W. Greenleaf.)

Mr. CURLER.—Q. Well, when the clouds are charged with electricity, and come and lay upon the lines, or come in very close proximity to the lines, electricity is inducted from those clouds upon the line, is it not?

A. I never figured it as—the only induced current I have ever had anything to do with, was where one line parallels another line, and it collects a  
394 current from that line; that is the only induced current I have ever had any practical experience with.

Q. Is not that known in electricity as resonance?

A. It may be; I told you before I don't know.

WITNESS.—(Continuing.) I did not construct this lightning-arrester, I helped. It was not constructed under my supervision. I was superintendent of the power-houses and superintendent [345] of operations. I was superintendent of construction at the power-house. Mr. Halpenny was looking after the construction of the Fairview and Wonder substations. I went over there to be over there when they put the juice on the line, because that  
395 came under the head of operations, when the juice was put on the line. I went over there for the purpose of inspecting. It was to inspect, to see what kind of a load we were going to have on that other end, so that we could take care of it, knowing what we were going to have—take care of from the power-house. I saw the lightning-arrester at Bishop, plant four. It was constructed several years ago; it has been replaced by a later model,—improve-



(Testimony of P. W. Greenleaf.)

ments that came out since that was put in.  
396 There was a general electrolytic lightning-arrester put in the place of it. I don't know when it was invented, or when it was first used. That was the first one I ever had any experience with—the first one I ever saw. I don't think it has been in use ten or fifteen years. I can't say. The live arms of the old arrester that was there first were somewheres between three and six feet from the ground, I would not say exactly; you could easily stand on the ground and work on the live ends.  
397 If it is in an isolated place, I would say that a lightning-arrester with the live ends three to six feet from the ground would be a safe construction.

Mr. CURLER.—Q. What is the usual height in the State of California for live wires?

Mr. CANNON.—Objected to on the ground it is incompetent, irrelevant, and immaterial to any issue in this case.

The COURT.—Live wires as connected with arresters?

Mr. CURLER.—Live wires connected with arresters.

The COURT.—I will allow the question. [346]

A. I have installed three or four arresters  
398 in the last year where the live wires came within—I would not say exactly; as near as I can say from measurement, standing on the ground, from eight to ten feet, and even closer in some instances.

(Testimony of P. W. Greenleaf.)

Q. What kind of lightning-arresters were those?

A. Electrolytic.

Q. That is the lightning-arrester that has brass knobs or buttons?

A. No, sir, that is a horn gap type, with an aluminum cone resistance, instead of those concrete blocks.

Q. The aluminum cones are placed in an oil tank, are they not?      A. Yes, sir.

WITNESS.—(Continuing.) I was in Fair-  
399 view two days, and possibly two nights, and  
worked at the substation two days. I think Mr.  
Halpenny and Mr. Sheaff went over to Fairview the  
day before I did in an automobile. I don't remember  
exactly whether they left before or the same day,  
but we went within a day of each other over to the  
place. I can look and see what day it was that I  
went to Fairview. (Witness refers to book.) I ar-  
rived at Fairview June 13th. After leaving Fair-  
view, I went out on the line with Mr. Herring. Mr.  
Halpenny and Mr. Sheaff went back to Won-  
400 der the day before Mr. Herring and I went  
out on the line. I don't think I stayed at  
Fairview a day after Mr. Halpenny and Mr. Sheaff  
left. I think they left the day that I went over  
there. I don't think that they left until along in the  
afternoon some time, and I stayed there the rest of  
that day and that night, and early the next morning  
went out on the line. I would not say that that  
was the day that the lightning-arrester was finished,  
because I don't know exactly. It was finished be-



(Testimony of P. W. Greenleaf.)

fore I left. I think [347] it was the day  
401 before we left. I think possibly that Mr. Hal-  
penny and Mr. Sheaff left for Wonder on the  
same day that the structure was finished. It isn't  
a fact that Mr. Perrin built that fence. Mr. Perrin  
might have helped build the fence; but I know the  
fence was finished before I left, because I remember  
pulling the wires up to the corner with a claw-ham-  
mer, where we stapled them on to the corner of the  
building. I don't know whether Mr. Herring helped  
build it or not. I am not certain that Mr.  
402 Perrin helped build the fence; the fact of the  
business is that I don't know who helped me  
build it. I don't know whether Mr. Perrin nailed  
the wires on, but he brought them over from the  
other substation, up to our substation, and who  
tacked the signs on I would not say, but the signs  
were up in place before I went away. I think they  
were up the day before we went away. I don't know  
if there was a sign put on the switch; I said I thought  
I put it on, but I was not sure but that they  
403 put it on; but I am pretty positive that the  
sign was put on the switch, in fact, I know it.  
I am absolutely sure the sign was put on that switch,  
and that I saw it there. I walked up to the sub-  
station that morning to telephone before I started  
out over the line; and it might have been just before  
I started out over the line that I saw the signs there.  
That was the last time I ever saw the sign on the  
switch—the last time I was ever in Fairview.  
404 I don't know how long it stayed there. I  
would rather work on a lightning-arrester

(Testimony of P. W. Greenleaf.)

from the ground, if I was working on it. I would work on that lightning-arrester with the current on from the ground. I would not so work on the live wires. If I was doing any work in the vicinity of those live wires, I would be careful while working around it. I would not work on the live wires with the switch not pulled. If I was going to work on the live end, I would [348] pull the switch. It

is just as impossible to work on that voltage  
405 on a pole as it would be on the ground; you could not work on that voltage at all—hot.

If the pole were twenty or twenty-five feet high, I would not be insulated. A dry pole before any charring of the pole had taken place, would not insulate you as against a current of electricity, of fifty-six thousand volts. A dry pole will not insulate you while you are working on it. I would not work on it if it was one hundred feet high. The heat used for drying out the transformers was about ninety de-

grees centigrade. We ran that up from ninety  
406 somewhere between ninety and a hundred.

The arresters I have seen of the Poole type, besides this one, are the one at Bishop, the one at Bodie, and the one at the Jordan power-house. This one at the Jordan power-house was not exactly like this one—the same type. It was made out of pipe. There was more framework to the horn gaps, because the wire wasn't rigid enough to stand up to  
take the bow, and they put in more framework  
407 to support the wire, to get the arc to the wire, than with this one, but the principle was the



(Testimony of P. W. Greenleaf.)

same about. That was not a Pacific Power Company arrester. The one I saw at Bodie belonged to the Pacific Power Company. The one at Bishop was the one between three and six feet from the ground.

Mr. CURLER.—Q. Are not the Southern Sierra Power Company's and the Pacific Power Company's line now connected at Bishop? A. I don't know.

Q. They are either connected, or in the process of connection, are they not?

A. I think they are.

Mr. CANNON.—Object to that as immaterial.  
408

Mr. CURLER.—It has been answered, your Honor.

Mr. CANNON.—I ask that the objection precede the [349] answer.

Mr. CURLER.—It is for the purpose, if your Honor please, of showing that this witness—

The COURT.—I see the point. I will allow the answer to stand.

Mr. CANNON.—We note an exception. The objection may be considered as put in before the answer.

The COURT.—Yes.

The action of the Court in overruling defendant's objection to said question, and allowing said question to be answered, and the answer to stand is here assigned as

**Error No. 29.**

409 WITNESS.—(Continuing.) In my opinion this is a safe construction. If a person

(Testimony of P. W. Greenleaf.)

with a shovel, or any other wooden implement, were to touch one of the live ends of the lightning-arrester when the power was turned on, he evidently would receive a shock, if the stick was wet—a conductor. If the stick was thoroughly dry and varnished he would not. I have seen some shovel handles that make a pretty good insulator, and I have seen them when lying around a dump that I would not want to touch anything with them.

Mr. CURLER.—I understand you to say  
410 that a hundred-foot pole would not insulate  
you as against that current, but a shovel  
handle would?

A. Well, it is owing to the condition of the pole, or a piece of wood. Just as I said a while ago, I have seen some pieces of wood a good conductor, and I have seen other pieces of wood that are not.

WITNESS.—(Continuing.) I would not like to work on such a twenty-foot pole, but it would probably insulate you; you are running a risk when you  
work with a pole, because a pole checks and  
411 absorbs moisture; and if it is a foreign pole,  
it [350] has been rafted down in the ocean,  
and accumulated salt in it, and salt will make a very good conductor. I have seen perfectly dry poles that have been rafted down in the ocean, covered with salt, that would not insulate you. I don't know whether one that was not covered with salt would or would not insulate you. If it were perfectly dry and well seasoned pole, it would probably insulate



(Testimony of P. W. Greenleaf.)

you, but I would not want to try it. The lightning-arrester at Bodie was a little different type  
412 from this; that was the one I stated was built out of wreckage of the electrolytic arrester; that was up in the air about fifteen feet. The live ends and the dead ends both were up about fifteen feet.

Mr. CURLER.—Q. Now, Mr. Greenleaf, if this switch were raised twice as high as it is and the lines ran down here, could not the live ends of that lightning-arrester have been built higher from the ground?

A. Well, from the contour of the ground there, it would have been pretty hard to raise the line much higher than it was.

413 Q. Well, if it were raised higher, the lightning-arrester could have been raised, could it not? A. Yes, sir..

Q. The only thing that you have in mind when you say that there might be an arc, or that the arc might fly up, was to keep the dead ends of the lightning-arrester far enough away from the high tension wires; is that right? A. Yes, sir.

Q. And if this structure were built high enough, this could be raised without any danger of the arc flying up to the live ends? A. Yes, sir.

Q. The arc is the evidence of current flowing, isn't it? A. Yes, sir. [351]

Q. When the arc becomes drawn out, the current immediately ceases flowing, doesn't it?

A. No, not until the arc breaks.

Q. Well, I say when it is drawn out to the extent

(Testimony of P. W. Greenleaf.)

of breaking, the current immediately ceases flowing?

A. As soon as it breaks it ceases flowing.

WITNESS.—(Continuing.) Amperage has nothing to do with the distance that electricity will jump from one wire to another. It has something to do with the length that the arc will draw.

The heavier your amperage is, the more current you are pulling over the line, and the further you can pull it out before the arc will

break. That thirty-three thousand volts and a tenth amperage, if the wind is blowing you could only pull it, possibly eighteen inches; if it was calm, and there wasn't any wind blowing, or anything, maybe you could pull it twice that far; it is a good deal according to the atmospheric conditions how far you could pull it. If you had that amount of voltage and ten

amperes when it is calm, I would not say how far you could draw it, because I don't know just how far. I never experimented to try

to see how far I could pull it. When I was at the Ontario power plant, I experimented on seeing how far I could draw an arc. I had about twenty thousand volts. We were drawing an arc over different substances, and some materials you could draw the arc farther than you could with the others. With our best material, I don't remember exactly how far we did draw an arc with twenty thousand volts. We didn't have any arms on the transformer we were

testing with, and I don't know what the amperage was we were using. I have seen a lightning-arrester of this type, the horn gap



(Testimony of P. W. Greenleaf.)

type, practically sitting on the ground. I have seen the same type arrester built from three to six feet from the ground, and the framework was setting on the [352] ground on two posts. It was built out of the framework, as I stated a while ago; it had to have more braces in it all the way through, because it was built of wire instead of pipe; it was built of big framework instead of small framework  
418 like that. It was outside of the transformer house. It was enclosed in a board fence about four or five feet high. That was the one at Bishop. I last saw this a little over three or four years ago. I have not been back there since. I know it isn't there now. The one at Bodie was about fifteen feet high. An arc always has a tendency to rise after it has once started. An arc will wave around most any way; you can't tell which way an arc will go any more than you can tell which way lightning will go; that is, it goes between the two points, but  
419 you can't tell just exactly which way it will go—likely to go three or four inches to one side or the other side, or up or down, but it has a gradual tendency to rise. I don't know what takes the arc up.

Redirect Examination by Mr. CANNON.

This California-Nevada Power Company is still in existence; it is the company that supplies Tonopah and Goldfield and other places down in that section. It supplies Silver Peak and Bishop; they sell part of their surplus juice to the South-  
420 ern Sierra Power Company. Before I left

(Testimony of P. W. Greenleaf.)

the Fairview substation the power was cut in. There was a switch at Lucky Boy; they closed the switch at Lucky Boy, and put the fifty-five thousand volts on all the way through the line, and then started the machines up at the power-house, and then gradually brought them up until we had the normal voltage on the line. Prior to that they had sixty-six hundred volts on there. That was the first time the high voltage was turned into the Fair-

view substation. That was after the lightning-arrester was completed. The high voltage had never been turned into [353] that

substation at all until after this lightning-arrester was constructed. I know the purring sound made by transformers when current is going through them. I heard that purring sound at Fairview on the day that the power was cut in. It would be rather hard to answer how far one could hear that purring sound in the daytime; I should say safely fifty feet from the transformers, you ought to hear it plainly. With reference to the rear wall of the substation build-

ing, I think the transformers were right up against the wall, back this way, back against the westerly wall. Some transformers are a little noisier than others; they will make an audible sound; we have got one station where there is three three hundred kilowatt transformers, and you can hear it a block and a half.

Recross-examination by Mr. CURLER.

The sound made by transformers is not exactly uniform, some transformers will make a sound that



(Testimony of P. W. Greenleaf.)

will carry a great deal farther than other transformers. When I first met Mr. Sheaff he was standing behind a switch-board at Wonder; I think the juice was on at Wonder at that time. There  
423 were three switch-boards there. I forget whether there was three or four panels to it; it was on one of the panels, but I don't know whether it was on the panel he was working on or not. He was tapeing wire; that was insulated wire, and the tapeing process was to complete and perfect the insulation where the joints were made.

**[Testimony of Clifton Herring, for Defendant.]**

Mr. CLIFTON HERRING, produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct examination by Mr. CANNON.

My name is C. Herring. I am the same witness who was called as a witness in this case for  
424 the plaintiff. I know the plaintiff, Mr. Sheaff, and became acquainted with him under [354] the circumstances I have stated and worked with him at the times I have detailed. When I was working for the Pacific Power Company, or the Hydro-Electric Company, I was receiving four dollars a day. When I was inspecting the line, or patrolling the line and inspecting it in the month of June, and looking for difficulties and trouble along the line,  
I was then receiving four dollars a day. The  
425 duties of an electrician's helper are to help an electrician—hand him materials, tools,

(Testimony of Clifton Herring.)

whatever he may need. The duties of an electrician are to do most any kind of wiring; he usually has to do the wiring of motors and transformers, station wiring, electric light wiring, putting in insulators, and working on live and dead wires. Although some electricians, or some who work at the trade and call themselves electricians at any rate, I have known, don't work on hot wires. The duties of the electrician, really include practically all kinds of work in and about electrical apparatus. All kinds of work are not dangerous. It depends on  
426 the electrician, on the man himself to some extent. Any kind of electrical work, about wiring, about electrical apparatus, about transformers, about substations, about lightning-arresters, or anything of that kind, comes under an electrician's work. The duties of the electrician's helper are to help the electrician in all that kind of work; all that kind of work the electrician is doing.

Cross-examination by Mr. GEDNEY.

It is my understanding that Mr. Edison is an electrician.

**[Testimony of Mr. R. H. Halpenny, for Defendant.]**

Mr. R. H. HALPENNY, produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

427 Direct examination by Mr. CANNON.

I reside in Riverside. I am Assistant Engineer Southern Sierra Power Company. I have been engaged with that concern [355] for about



(Testimony of R. H. Halpenny.)

a year and a half. I have been engaged in electrical work something like seven years. I had a common school education and a high school education. After I graduated from high school in Corydon, Iowa, I entered the Iowa State College of Engineering. I remained there one term, approximately four months, and then I left school on account of sickness.

I didn't take up my studies at the beginning  
428 of the next semester but stayed out for two years. I then took up my course at the point I left off and completed it in 1908. That was the Iowa State College of Engineering. During the time I was out of that college and before I went back, I was with a local telephone company in my home town for a year in charge of the exchange and lines, carrying on construction work and repair work, or anything incidental to operating an exchange of that character. When I went back to college

429 I remained there three and a half years or seven semesters—I completed the course,—the ordinary four years college course and graduated in 1908. After I graduated, I was almost a year with the Ames Engineering Company, first as an electrician, and the latter part of that time as testing—testing man, in charge of the testing department; I left that company to take up work with the Nevada-California Power Company in the spring of 1909, and took a position with them as superintendent of transmission; later, in 1910, in September,

430 I went with the Pacific Power Company and was electrician and erecting engineer, and

(Testimony of R. H. Halpenny.)

worked for that company approximately for about a year altogether; the year was broken into by one or two short periods, which time I was in the office of Manifold & Poole, engineers in Los Angeles; and upon leaving the employ of the Pacific Power Company, I went back with Manifold & Poole, remaining with them until I took up the work that I now have with the Southern Sierras Power Company.

[356] My work with the Southern Sierras  
431 Power Company is partly what is known as  
inside, and partly outside, that is, I have some  
field work and some office work; I would say I was in  
the field almost half the time; the office work consists of laying out stations, lines—in fact, all kinds of electrical equipment that we have to do with, and making calculations pertaining to them. The field work consists in going out, inspecting and directing the installation, according to the plans that are furnished by the office. During these seven years I have been devoting myself to electricity in its various phases and uses practically all of the time. As  
432 electrician and erecting engineer for the Pacific Power Company, I installed apparatus  
in four substations; the switch-board transformers, and other equipment in the present power plant. I did very little of the construction work on lines. I had occasion to do some where it was necessary—short pieces of line—necessary to make a connection. The substations that I installed were at Bodie, Aurora, Fairview and Wonder. Bodie was to serve the local territory, including the mines in



(Testimony of R. H. Halpenny.)

that vicinity and the town of Bodie. Aurora was pretty near primarily to serve the mines, that  
433 is, within a mile or so of the station, and any other mining properties that might require power; in fact, all these substations were put in with the idea of delivering a mining load—what is known as a mining load of electricity. The length of the line from Bodie to Wonder and Fairview is approximately one hundred and twenty-five miles from the plant at Jordan to Wonder. The other line to Aurora from the plant is in the neighborhood of thirty miles. The current for instance on this particular line from Fairview to Wonder was sent clean  
434 through a distance of one hundred and twenty-five miles. From the standpoint of economy, it was essential that a high voltage should be used for that distance. I think I went to Wonder about the first of May; I [357] think the twenty-eighth of April I went from Fallon to Fairview; then went to Wonder for a day and back to Fairview. Well, my first work upon going up there was in Fallon, about forty-five miles from Fairview, I guess; that work was unloading a crate of transformers, which were at the station platform at that time. The transformers were to be used at the  
435 Wonder and Fairview stations; that was the nearest railway point. At that time there was line construction going on under the superintendence of Mr. George Johnson. I was sent up there to put in the two stations. I was sent up there to unload those transformers, to see that they

(Testimony of R. H. Halpenny.)

were transported to the points at which they were to be used, and to install them at the two stations; and when I arrived there there was no station, no building there, it was just in process of erection.

Neither one of these stations were built at  
436 that time. I was not able to go to work at either installation at that time for about in the neighborhood of ten days. After checking up the material in the two places and reporting any shortages that existed, I assisted Mr. Johnson. During the time I was assisting Mr. Johnson shortly after my arrival at Fairview, I saw Mr. Sheaff for the first time. I believe the first time I saw Mr. Sheaff was on the street of Fairview. I was intro-

duced to him at that time by Mr. George John-  
437 son. In the next few days, within a day or so from that time, I *first with him*. They were finishing the digging of the holes at the end of this short line next the station and I saw him engaged in that work, at blasting, I think. They were putting a few shots in the different holes; the ground is of such a character there they had to use powder to loosen up the earth. This was a little branch from what is known as "Old Town"—the old town of Fairview, about two and a half miles down the gulch. After the holes were completed they  
438 started to raising the poles. I saw him assisting in raising the poles—piking, that is, using a pike [358] pole in raising the poles; it is necessary to use pike poles in raising heavy poles; after the pole is up a certain distance the one end is



(Testimony of R. H. Halpenny.)

raised, the leverage—or the pole itself, its own weight is so powerful, that pikes must be used to push it up the rest of the way. After the walls were raised, I saw him tamping, shovelling in; in fact, any of the jobs that were necessary in completing  
439 the line. During that period they were stringing wires. He was in the gang at the time the wires were being strung. The first time that he came under me, or was employed under my direction was about the fourteenth of May. From the fourteenth of May, 1911, up to the time of his accident, he was under me as one of the employees subject to my directions. When he came under me the first thing we did when the building was turned over to us, was to begin to move the apparatus inside of the building and uncrate it. He  
440 assisted me in that work. As a man of intelligence and capacity, Mr. Sheaff was above the average. After this moving of these supplies, the next work I set him at was the erection of the switch-board in the building within this Fairview station. The first thing was the setting up of the board itself, fastening it to the wall, assembling at various parts, putting certain pieces of the apparatus together such as—well, what was most convenient at the time; I think that the switches were mounted at that time—the oil switches back of the  
441 board were mounted at that time, all three of them—there were three panel boards, a receiving panel, and two feeder panels, an oil switch being provided for each one; these switches were

(Testimony of R. H. Halpenny.)

mounted on the wall, and operated by levers, or through levers, by the handle at the front of the board, on the front of the marble. Mr. Sheaff assisted in fastening the switches, filling the tanks with oil, placing the tanks in position, fastening the bell crank levers, and connecting the rods in place, bolting the switch-board panels [359] together;

fastening the switch to the wall, and placing  
442 insulators and pins upon the pipes which  
braced the board; and that was about all that

was done on the board at that time. The next employment at which Mr. Sheaff was engaged under me was the installation of what are known as disconnecting switches inside of the station—at Fairview. All this work was done on this Fairview station. He assisted in fastening these switches to the wall, their position being immediately under the entrance brackets. At that time we had not run

any wires in the station, and did not until we  
443 had the transformers in position for the drying  
out. After the installation of the disconnecting

switches, the next thing done by Mr. Sheaff and myself was the placing of the transformers, uncrating the cores, and assembling of the various parts of each transformer. Mr. Sheaff assisted in all of that work. The connections were then made for the beginning of the drying-out process. We made connections through the entrance brackets of the station with the main line, and used sixty-six hundred volts for the drying out; then each transformer—or the three transformers, were con-



(Testimony of R. H. Halpenny.)

nected together, and the wires were run from the  
inside entrance bracket insulator; or I should  
444 say, the inside entrance insulator, down to the  
switch-board, and were taken through the  
current transformer, through the oil switch, and  
then to the transformers. All those operations re-  
quire wiring. Mr. Sheaff placed insulators—we had  
to put in some temporary wiring for that—wooden  
arms on the inside of the building, and placed pins  
and insulators on them; he assisted in the placing  
of those, and in the stretching of the wires from the  
switch, from one switch to the other, placing the  
transformer, and connecting up with the various  
transformers. That work practically com-  
445 pleted the preparation up to the drying out of  
the transformers. Just as soon as we were  
[360] able to get this work started, we put the cur-  
rent on the transformers. Mr. Sheaff was present  
when I put the current on the transformers. That  
current was put on the transformers by the closing  
of the oil switch on the switch-board. The oil  
switch was one of the three I spoke of as being  
mounted on the wall back of the switch-board.  
After the current was put into the transformers  
it was routine after that for three or  
446 four days, that is, we watched the tempera-  
ture closely, and did various jobs that could  
be done during the period between readings; we took  
readings at regular intervals, half hourly readings,  
after the first few hours, a little more frequently  
for the first hour or so. Those were thermometer

(Testimony of R. H. Halpenny.)

readings indicating the temperature of the windings and insulation of the transformers. Mr. Sheaff was the only assistant I had in that work of drying out of the transformers. It was necessary to keep the —what is known as the heat on for twenty-four hours or we would lose the results of the  
447 previous period of heating, because the cooling would take place during the lapse. I took the day shift and Mr. Sheaff took the night shift. Mr. Sheaff was alone and in charge of that work during his night shift. He was left in charge of the station during the night. The drying-out process continued between three and four days, as I remember now; it all depended on how fast the temperature of the transformers came up to the point we desired to raise it to. Just as soon as we were through with the transformer heating we commenced heating oil by the use of resistance immersed  
448 in the oil, the oil taking up the heat from the resistance. In that operation we used two hundred and twenty volts on the resistance, sixty-six hundred volts on the high side of the transformer, used in this process. I reduced this voltage for two reasons, one was it was safer to handle at that voltage, and another was it would be difficult to build a resistance [361] that would operate at sixty-six hundred volts, without making it too bulky and unwieldy. My recollection is that I had Mr. Sheaff build the wooden frame; this resistance con-  
449 sisted of a series of coils that are supported on a wooden frame or rack; this rack in turn



(Testimony of R. H. Halpenny.)

was supported on some porcelain knobs, to keep from coming in contact—the wires that were on it—from coming in contact with the metal tank in which it was placed; these coils were made by winding galvanized iron wire on pipe, simply to give it the form of a helix, and then stretch it slightly to separate the turns, fastened at either end on knobs on this wooden rack, and connected in series. The

machinery and the transformers were installed in the Wonder station after the installation in the Fairview substation. The

work was carried on in a similar manner in the two substations. In the two substations there was practically the same equipment and arrangement with the exception in the Wonder station we had the transformer bank of the Mining Company, as well as our own transformers at that time. By “transformer bank” I mean a bank of transformers is two or more transformers working together. In the Wonder substation besides the transformers that belonged to the Pacific Power Company, there

were also the transformers that belonged to the Nevada Wonder Mine. They were in the same building, the opposite side of the building from the switch-board. Each bank was placed in a line; these lines were at right angles to one another, and I imagine—that the junction of the two lines would be considered, the line intersecting the transformers, at that end would be probably four feet.

(Testimony of R. H. Halpenny.)

Mr. CANNON.—Q. Then the transformers belonging to the Pacific Power Company were in a line, and the transformers belonging to the Nevada Wonder were in another line, at right angles with the first line? [362]

A. Yes, the Pacific Power Company's  
452 transformer line paralleled this entrance or gable end, at which the wires entered the building; and the Mining Company's transformers parallel the side that would correspond with this left-hand side of the model.

WITNESS.—(Continuing.) Mr. Sheaff and myself installed those transformers. So that in addition to the work done in installing the transformers in the Fairview station, we installed practically the same transformers in the Wonder station, and another set of transformers for the Nevada Wonder Mining Company. At the Wonder substation Mr. Campbell might have been down there. I don't believe, though—no, his work was all done in  
453 the mill. He might have assisted in shoving the transformers around from place to place, the Mining Company's bank, because they were rather heavy, and we usually needed an extra man, for that; but the actual installation, connecting up, Mr. Sheaff and I had no other assistance. In the drying-out process we had no assistance there except Mr. Greenleaf's. Mr. Greenleaf was there taking shift with Mr. Sheaff and me during the drying-out process. He was there for about six days; I think he came on the 7th of June, and left on the



(Testimony of R. H. Halpenny.)

13th; that was during the drying-out period  
454 only. The work done by Mr. Sheaff at the

Wonder station was very much the same as the work done in the Fairview station. The work was carried on along the same line in the two stations. The preliminary installation of the Wonder substation, that is, the work that could be done up to a certain point, at which the transformer drying had to commence, and the transformer drying, took approximately two weeks. My only assistant during all of that time, except the time Mr. Greenleaf was

there, was Mr. Sheaff. I placed Mr. Sheaff  
455 in charge and gave Mr. Sheaff directions with respect to the completing [363] of that line to the mill, to the Nevada Wonder Mill and the Nevada Wonder Mine.

Mr. CANNON.—Q. State whether or not you placed Mr. Sheaff in charge of any construction work there, near or at the Wonder substation.

Mr. GEDNEY.—We object on the ground it is leading.

Mr. CURLER.—And calling for the conclusion of the witness, and not a statement of fact.

The COURT.—The objection seems to be good.

Mr. CANNON.—We note an exception.

The action of the Court in sustaining said  
456 objection to said question is here assigned as

**Error No. 30.**

A. I instructed Mr. Sheaff to dig the holes for two short lines; frame the poles, raise the poles, string the wire on the same; tie the wire in; in fact,

(Testimony of R. H. Halpenny.)

to complete each line to such a point that it could be used for transmission of power.

WITNESS.—(Continuing.) Mr. Sheaff did that work in a perfectly satisfactory manner. His work in and about the substation which I have described was done in a very satisfactory manner. The lightning-arrester at Fairview was built first.

457 That was built on the 13th of June, 1911. I was present all of the time during the construction of that arrester, and was in charge of it.

Mr. Greenleaf, Mr. Sheaff, Mr. Campbell and Mr. Herring, and the carpenter, Mr. Granquist, assisted me. The first piece of work that was done in connection with the building of the lightning-arrester was the framing of the timbers. The carpenter did that. The next thing done was the bending of the pipes which were to serve as horns. My recollection

is that I bent the first pipe myself, or assisted  
458 in the bending of it, in order to get the proper curvature of [364] that pipe, it was used

as a templet—I don't know who bent the rest. I am not sure which of the people working around there bent the rest of the pipe. There were five other pipes to bend in accordance with the model I made.

The pipes were next tied in on the insulators. I remember tying in some of them myself, and I am not sure just which of the men tied in the rest of

459 them; it took two to work on any one of the pipes at the time it was being tied in, one to hold it and the other to tie it in. My recollection is that Mr. Sheaff assisted in the setting of the posts



(Testimony of R. H. Halpenny.)

and the fastening together of the support there below, or on the cross arms. My memory is not so good on that point, but there was no other work going on at the time, except the construction of this arrester. There was nothing for that gang of men, or any of them to work on at that time except the construction of that lightning-arrester. It only remained to build the arrester; afterwards the station could be cut in. During the construction of that lightning-arrester, Mr. Sheaff might before the close of the day have been engaged in piling material at the south side, the side nearest the mill or the station; there was some loose material out there that needed to be collected and piled up in neat shape. That material was construction material left from the building of the line. Outside of the piling of that material, he did not, to my recollection, do anything about there except to assist in the construction of this lightning-arrester. I can't at this time state in detail the various things he did, in the latter part of the day. The running of the ground wire had been completed by noon of that day. The first work was to put this ground in and Mr. Sheaff assisted in that; that was commenced on the 12th. Mr. Sheaff, Mr. Campbell, Mr. Herring, and myself did that work. It consisted in the stringing of the line from the corner of this building, [365] this northwest corner of the building to the gallows frame of the—I forget the name of the shaft, a shaft near by, an old mining shaft. That shaft was something like about

(Testimony of R. H. Halpenny.)

seven hundred feet away. We placed one pole at an intermediate point at the corner of this building and the gallows frame. I think Mr. Herring, Mr. Sheaff, and possibly myself, put in that pole. We were all engaged in stringing the wire. I myself put the ground down into the well and into the water.

Mr. CANNON.—Q. How was the wire carried from the dead end of the lightning-arrester  
463 itself, out to the place where it was carried on the pole?

A. The dead ends were tied together; I mean by that the three dead horns were tied together with wire.

Q. As they appear on the model?

A. Yes, a wire dropped directly down from one of the horns, or from an intermediate point, between one of the horns, to a trench taken over underground in a trench a few inches below the surface of the ground, from the corner of the building up to the corner of the building, where it was tied on a wire that entered the gallows frame.

464 WITNESS.—(Continuing.) I don't recall who dug that trench and laid that wire in the trench. The lightning-arrester at Wonder was built a week or ten days later than the lightning-arrester at Fairview. Mr. Sheaff and myself were in the gang building that lightning-arrester. Mr. Sheaff and I built that lightning-arrester with the exception of some assistance at the time the pole was raised. At the time the pole was raised, and outside of that there was nobody else besides myself and Mr. Sheaff



(Testimony of R. H. Halpenny.)

that I remember working on the Wonder lightning-arrester. We used the same size pipes at the  
465 Wonder lightning-arrester for the horns.

Mr. Sheaff and myself bent them and put them in and wired them up. It took [366] the two of us something more than a day to build that lightning-arrester. With that lightning-arrester for a ground we dug a hole in the ditch, carrying the slimes from the mill, in wash ground, and placed a copper plate similar to the one used at the Fairview station, to which was soldered the ground wire, which, in turn, ran from the plate to the arrester. Mr.

466 Sheaff assisted me in laying that wire and placing that wire in the moist ground. We were alone at the work. After the ground was put in at the Wonder lightning-arrester, the nature of the ground was not changed. Subsequently there were concrete blocks out for the wires leading to the ground from the dead horns of the arrester. Those concrete blocks on the Wonder lightning-arrester were placed on the ground, directly under the dead horns. The office of them was to limit the dynamic flow, or dynamic current following the start-

ing of an arc by static disturbance, or any  
467 other cause. The concrete block would offer a certain resistance, depending on the cross-section and length of the block, and that in turn would limit the flow of current in the circuit at that time. Each dead horn had its own block, connected by a wire fastened from the dead horn, running from the dead horn to the clamp at the top of the concrete

(Testimony of R. H. Halpenny.)

block, the block being set a certain distance in the earth, just sufficient to keep it from falling over; another clamp was fastened at the bottom of the block for making contact, to this clamp was  
468 attached the ground wire. Then all three of these concrete blocks were attached to the ground wire originally laid. A current going through the dead end would have to follow the path of the wire, the concrete block, and the ground wire, to the ground, or at some point along that, at which it could go to the ground. The work of placing these concrete blocks, setting them and connecting them up was done two or three weeks before the day of this accident. [367] Mr. Sheaff did the most of the work, the actual setting of the blocks and placing the clamps, and I assisted in making the con-  
469 nections to them. Mr. Sheaff and myself were the only ones working at this work, and I assisted Mr. Sheaff, and Mr. Sheaff assisted me at that time. The actual work on the arrester at Fairview did not take more than about three hours. The rest of the time was put in in the putting in of this ground wire already referred to. I arrived there about noon on the 12th, and commenced work immediately after lunch, and we had completed all of that work by about four-thirty, the evening of  
470 the 13th of June. I left the place sometime that same evening, at nine or ten o'clock with Mr. Sheaff. When we left the station the fence had not been built. I made arrangements with Mr. Greenleaf to see to the building of the fence the fol-



(Testimony of R. H. Halpenny.)

lowing day. When I went back to Wonder Mr. Sheaff returned with me. At that time the lightning-arrester at Fairview was completed. Before Mr. Sheaff and I went to Wonder that afternoon at five o'clock we cut the station in. "Cutting in the sta-

tion" is a term that is used at the time that  
471 any new piece of apparatus is put on the line,  
or connected with the line; and consisted, as  
we handled it there, in having the power-house  
back off the line, or drop, or load—pull off or connect  
the line through at Lucky Boy; that is, fifty  
thousand volts had not been transmitted past that  
station at the time—past Lucky Boy—the switch  
was closed in there. Lucky Boy was a sub and switch  
station. Before that time fifty-five thousand volts  
had not been put into this substation at all. It had

not been that far along the line. Before that  
472 time, sixty-six hundred volts had been put into  
that station. When Mr. Sheaff and I were  
working in that substation, we were working with  
sixty-six hundred and two hundred and twenty volts.  
That station was cut in about five o'clock. [368]  
I communicated with the power-house, so far as tak-  
ing off the load and making the arrangements for  
turning on the fifty-five thousand volts by telephone.  
We were all there when the fifty-five thousand volts  
were turned into that substation for the first time.

Mr. Sheaff was there. The object of turning  
473 in the fifty-five thousand volts at that time  
was the putting of the transformers in service.  
The object in turning on the power was to put full

(Testimony of R. H. Halpenny.)

voltage on that end of the line. Inspection was made after the power was turned on. Nothing occurred in the way of trouble. While Mr. Sheaff and I were working there together on the station, up to the 13th of June, the voltage carried there over the line was sixty-six hundred, and lower voltages. The high voltage was turned in to the Wonder station  
474 about the 18th of June, just a few days after this station was put in service. Mr. Sheaff and myself were the only ones that I remember were there. That was the first time that fifty-five thousand volts had been turned into the Wonder station. Yes, that was the first time.

Mr. CANNON.—Q. What were all of the parties doing at the Fairview station when the power was cut in for the first time?

A. Well, the work had practically been done; the arrester had been completed; at the time the voltage started to rise, that is, the power is built up  
475 on the line, raised the voltage, we were all in or about the front doors of the station, listening, and watching the switch-board.

Q. For what purpose?

A. At a time like that it is rather a critical time; one is more or less nervous; something may happen the first time an apparatus is tried out, so we are naturally very anxious to note the rise in voltage, which we could get from the volt-meter on the switch-board, and to tell from the sound that [369] nothing had happened to injure or damage the transformers.



(Testimony of R. H. Halpenny.)

Q. Had the lightning-arrester been completed at that time?

476 A. Yes, it was completed.

Q. Was there any other work for the men to do there except to watch the event of turning in that power?

A. That is all I remember there was to do at that time.

Q. Was Mr. Sheaff with the people who were watching that operation? A. I believe so.

Q. And about the Wonder substation, would the same critical conditions exist there?

A. Just the same.

Q. And you say no one was with you there excepting Mr. Sheaff, at that time?

A. Not that I remember.

Q. Was he with you when that high power  
477 was turned into the Wonder substation for the first time? A. Yes.

WITNESS.—(Continuing.) After the time I have spoken of, I next went to the Fairview substation about the nineteenth of July; the next day after the accident to Mr. Sheaff. I was there at the point where the accident happened. The condition I found there at that time, as compared when I left the previous day, was that the holes had been dug underneath the dead horns; the holes for the setting of blocks. The fence, when I left before, was not there; I found that fence had been built. I found a  
478 fence there on the nineteenth. On the nineteenth there was a danger sign on the front

(Testimony of R. H. Halpenny.)  
door of the station, and as I remember it, one on the switch, fastened to the post. My recollection is that these signs said "Danger, high voltage, keep out," or "keep away"; then had the initials of the Nevada Hills Mining Company. They were all made from the same tracing; they were blue-print signs, made in the draughting office. It was the ordinary blue-print with [370] white letters. I would say those letters were very plain. I saw them plainly.  
479 I don't remember whether the letters were of uniform size or not, but my recollection is that some of the words, either "Danger" or "High voltage"—I believe the word "Danger" was larger than the rest; and as I remember it, the letters would be some two and a half inches high. To the best of my memory, I would say that size of the whole sign was twelve by fifteen, or twelve by eighteen inches. During the times that Mr. Sheaff and I were working together in the Fairview substation, and in the Wonder substation, I warned him several  
480 times at each of the stations. As I remember it, I would say, "Remember that wire is there—keep away from that wire, it is hot." I remember on one occasion after giving him a warning, saying to him I hoped that he did not think that I didn't give him credit for average intelligence, from my repeatedly warning him, but I always considered it safer to warn a man too often than not enough. In answer to that statement he said he took it in good part, and understood the motive, or words to that



(Testimony of R. H. Halpenny.)

effect. I gave Mr. Sheaff directions and in-  
481 structions with reference to digging the holes  
and putting in the concrete blocks at the Fair-  
view substation. I gave him instructions to go to  
Fairview, taking the blocks with him, as I remember  
it now, to get some clamps from the blacksmith of  
the Mining Company, these clamps having been or-  
dered by phone a few days previous to this; to dig  
the holes for the blocks, put the clamps on, set the  
blocks in place, and to not make any changes in the  
wire, or connection, until I came over the following  
day. In response to those instructions, Mr.  
482 Sheaff left in the morning of the 18th to carry  
them out. That was the next day after I  
gave the instructions. During the morning of the  
18th of July, I was talking with Mr. Sheaff on the  
telephone at about eighty-thirty. [371] As I rec-  
ollect it, he called me to tell me that the clamps were  
not completed, but would be a short time afterward.  
I told him all right, to go ahead, to go as far as he  
could with the other work, and get the clamps  
483 later. I next saw Mr. Sheaff after his leav-  
ing for Wonder on the morning of the accident  
at Fallon, about the second or third day after the  
accident. In passing through Fallon, I called at the  
Grand Hotel where he was staying. When the acci-  
dent happened, the work that Mr. Sheaff and I were  
doing there was within a day of completion. I went  
to the hotel where Mr. Sheaff was at that time, I  
think on the 21st of July. I saw Mr. Sheaff on that

(Testimony of R. H. Halpenny.)

occasion. We talked for a few minutes. We  
484 did not dwell on the accident itself very much.

My recollection is that I asked him how he  
ever came to get into that. As I remember it now,  
he said he didn't know. During my experience as  
an electrician, I have observed and seen a great many  
lightning-arresters. I am perhaps not acquainted  
with all of the different types of lightning-arresters.  
I would say I know of over a dozen or so different  
types of lightning-arresters. The arresters are built  
for all voltage, for use on circuits of three hundred  
and ten volts, or even the telephone circuits,  
485 up to the highest voltage in commercial use.

While I was a student, or after I had been  
out one term in the Iowa State College, I had to do  
with reference to telephone-arresters. At the time  
of this accident, the principal kinds of high voltage  
lightning-arresters in use were just the general  
classes. There is the electrolytic, which is a distinct  
class, then there is the graded resistance type, and  
the horn gap; the multi-gap—I could name several  
others, giving them the names that they are com-  
monly known by, but they all depend very much on  
the same principle. They are all constructed  
486 with two—they must serve two functions;  
one, to take any excessive potential [372]  
from the line—serve as a sort of a safety-valve; and  
the other is to successfully interrupt the flow of  
dynamic current, once the arc is established. A  
surge, or an overcharge may be occasioned by any  
one of several causes; it may be due to a direct stroke



(Testimony of R. H. Halpenny.)

of lightning, induced, what is known as an induced disturbance, caused by lightning somewhere in the neighborhood of the line; it may be due to switching operations on the line, suddenly breaking or opening

the load; it may be due to trouble on the  
487 line, such as arcing, what are known as arcing grounds; shorts, and so forth. As to reso-

nance, that is a condition that you don't find so very much; theoretically, it is possible; practically, to a certain extent, but not in commercial lines, you don't find that condition existing to a very great extent, as I have said. In a limited way, you might find the condition of resonance, but it would only have a limited effect to what it would have if there

was a perfect condition for resonance to occur.

488 I don't consider that there is any possibility of the resonance being sufficient, or otherwise, on that line, to increase the voltage to the amount necessary to jump the four and a quarter inch gap. At the time of the accident, there was no switching that would remove that possibility; there was no trouble, at least no trouble that we know of, no load to be thrown off that was of sufficient magnitude to cause a surge, a surge of such intensity that it would go over a gap of that length. I was at the Wonder

station up to about twelve o'clock on the  
489 morning of the accident. Any surge on the line from any cause would very likely be indicated in the Wonder station. We had a volt-meter connected with the line in the Wonder station that would indicate any surge occurring at that time. I

(Testimony of R. H. Halpenny.)

didn't observe any indications of any surge that morning. So far as I observed, there were no indications of any lightning at [373] that time at that end of the line. My recollection is it was a perfect June day. There were no static disturbances

of any kind that day that I noticed. I considered this lightning-arrester at Fairview very well suited for that location, with the conditions existing there, that existed at the time it was built. At the time of, and before, this accident, where an arrester was low enough, if there was any danger of people moving in and about, or near to the arrester, the arrester would be fenced in; where the arrester was sufficiently high to prevent this possibility, no fence was needed. If the lightning-arrester was high enough, no danger sign would necessarily be used; that is a thing that depends altogether on the practice of the company; it may

not be put there; in fact, nearly all high tension transmission lines have danger signs on the poles. It could be considered common practice to place danger signs around high-tension wires and electric apparatus at that time. I very often heard the purr of the transformers while they were working. I have heard the purr of the transformers at the Wonder substation, and the Fairview substation. I have been in the Wonder substation with Mr. Sheaff while the transformers were working and purring. That one in the Wonder substation could be heard out of the building for some little distance. I was in the Fairview



(Testimony of R. H. Halpenny.)

substation with Mr. Sheaff while the transformers were purring on the night that the station was cut in. The purr of those transformers could be heard outside of the building; how far would depend on the kind of a day. I am sure you could hear them on a still day for a distance of fifty feet from the building. All joints in connection with those two substations were soldered. Mr. Sheaff and myself

493     self did it all. Mr. Sheaff did at least half of it by himself. A great many splices were made. I would say fifty per cent of that kind of work Mr. Sheaff did. All [374] those joints were taped. Mr. Sheaff did fifty or perhaps sixty per cent of that kind of work. Tapeing serves a double purpose in a job of that nature; first, to protect, to bring the insulation of the joint up to the same point as the insulation of the wire; and second, the appearance. Mr. Sheaff, while under me, did work in placing insulators. We placed insulators

494     in the station and on the switch-board. Mr. Sheaff did at least half of it. Mr. Sheaff did some of the work of tying in the wires on the insulators. He did at least half of the work. Any ordinary insulation of this wire and live arm of the lightning-arrester would be of no avail. Any ordinary insulation that you could place on that would be of no value as a protective insulation. In a general way a lineman must work on or about electric lines. They may be either dead or live wires up to a certain voltage. The practice of various com-

(Testimony of R. H. Halpenny.)

panies differs considerably in regard to the  
495 voltage at which linemen work. Some places  
in the west lines are worked on at voltages  
up to and including seventeen thousand. Twenty-two  
hundred is about the limit in common practice. Up  
to twenty-two hundred volts, in dry weather, they  
are commonly worked upon in various parts of the  
country. The greatest distance I remember of hear-  
ing transformers hum was approximately half a  
mile; perhaps a little greater than that. Mr. Sheaff,  
the plaintiff, never appeared to me, during the time  
he was working with me to be in any wise incompe-  
tent to perform any duties assigned to him.  
496 He appeared able to carry on his work in a  
satisfactory manner. With reference to all  
this work that I have detailed, the soldering of wires,  
tapeing up wires, connecting them up, laying them,  
I would call work for the electrician. I recall a spe-  
cial instance to some technical work that Mr. Sheaff  
assisted me in. At the time the current was first put  
through the transformers at the [375] Fairview  
station, it was a matter of some doubt as to just what  
the current would be for those connections used, it  
just depends on the characteristics of the  
497 transformers; and we made a preliminary try-  
out, and at that time there was a poor connec-  
tion in the secondary wiring of one of the transform-  
ers, which fused; it burned out at the time the  
current was first turned in, making it necessary to  
get into that transformer or lift out the cord and re-  
pair it. We did that that night, Mr. Sheaff and my-



(Testimony of R. H. Halpenny.)

self. Mr. Sheaff assisted in the splicing of the joint at the point of fusion, and breaking and removal of charred insulation.

Mr. CANNON.—Q. What was the appearance of that joint after it had fused or burnt; when  
498 you and Mr. Sheaff went to work on it, how did it look?

A. Well, the connecting strip, copper strip between the two coils had melted out—blown; the ends of the strip had the ordinary appearance of a fused piece of metal, and the insulation, of course, was burnt back for a little distance at either side.

WITNESS.—(Continuing.) Some of the melted material had fallen upon the core of insulation in the vicinity of the break. After we had stripped the insulation, there was nothing to prevent us from seeing results of the burning there or fusing. Mr.

Sheaff assisted me in stripping the insulation  
499 down to the point where the fusing could be seen. I had a conversation with Mr. Sheaff in reference to his use of spurs in climbing poles. I asked him if he could climb. He gave me to understand that he could. I cannot recall the answer he made. I simply remember that I gathered from our conversation that he was able to climb. The highest price paid to linemen during the time I was working there was four dollars and a half. I would say that was the ordinary pay of linemen for work [376]  
around there. The ordinary pay of an electrician's helper was four dollars. We did not  
500 pay any more than four dollars for electrician's helpers.

(Testimony of R. H. Halpenny.)

Cross-examination by Mr. GEDNEY.

I first saw Mr. Sheaff at Fairview; at the time I saw him he was returning from work. I next saw him the next day, when he was working on the construction line from the main line to Fairview station. I worked with him a few days. He was digging holes, raising poles, stringing wires. I don't remember whether he was stretching the wire out, or carry-

ing it up on the pole after the wire had been  
501 stretched out. This was on this branch line.

I am not sure that I saw him at that time carrying the wires up on to the poles. I wasn't along the line at the time of the stringing; after the poles were raised; I didn't spend much time on that line itself at that time; I started work up at the station by myself—worked there for a day or so while they were stringing the wire. I can look back now and say that I saw him on the pole down there during that time.

That was on that substation line. That was  
502 the first time I had seen him, practically. My

recollection is that he did tie in some of those wires. I don't remember if some four or five, or half a dozen of those wires that he tied in at that time had to be retied a little later. I don't know that the work was not properly done, and they had to be retied. I would not say that they did not have to be

retied, but if they did, I knew nothing about  
503 it. I could not say that that was the first time he ever tied in any wires. After Mr. Johnson

had hired him he just turned him over to me. I didn't employ him in the first instance. I don't know



(Testimony of R. H. Halpenny.)

what was the contract of employment between Mr. Johnson and Mr. Sheaff. I believe it was about May fourteenth that Mr. Sheaff started to work for me. The first work done under me was at [377] the station at Fairview.

Mr. GEDNEY.—Q. At the Fairview station; now at the time that he came over to work under you, was there any understanding between you and Mr.  
503 Sheaff as to what he was to do?

Mr. CANNON.—Objected to as calling for the opinion of the witness.

The COURT.—That question can be answered by yes or no.

A. Yes.

Mr. GEDNEY.—Q. What was that understanding?

The COURT.—He had better state the facts, and not the conclusions.

Mr. CANNON.—We object as calling for the opinion of the witness.

Mr. GEDNEY.—Q. State the facts concerning this understanding, or governing this understanding.

The COURT.—If it was a matter of conversation between you and Mr. Sheaff, state what that conversation was, what you said and what he said.

504 A. I could not state what the conversation was.

Mr. GEDNEY.—Q. You cannot state it?

A. I cannot state it, no.

Q. State the substance of it.

A. That he was to assist me, which he agreed to

(Testimony of R. H. Halpenny.)

do in the construction of the station.

Q. Was there any agreement or understanding there, that he was to act as a lineman?

Mr. CANNON.—Object on the ground it is calling for the opinion and conclusion of the witness.

The COURT.—Well, he can answer yes or no.

A. Not at that time. [378]

Mr. CANNON.—We note an exception to  
505 the ruling.

The COURT.—Let the exception be noted.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 31.**

WITNESS.—(Continuing.) The time Mr. Sheaff was climbing these poles, I don't remember whose climbers he used. I think he didn't have a set of his own, perhaps he used my climbers. I could not say whose safety-belt, or whose tool-belt he used. I am not sure as to that. He had some tools of his own.

He had pliers, I remember that distinctly. He  
506 had pliers and a pocket knife. I first asked him if he could climb a pole at Wonder, about the middle of June. That was after I saw him up on the pole at that branch power line. I don't remember whether he used climbers to go up on that pole at the time I saw him building that subline or not. I remember the poles I saw him on were switch poles, at the time the switch was raised at Fairview. The building of that switch was done before Mr. Johnson left. Prior to the time that I saw him tying  
507 in the wire to the switch pole in the Fair-



(Testimony of R. H. Halpenny.)

view station, I had not seen him up on any pole before that. Not that I remember distinctly. Mr. Sheaff could get up on that switch pole by using a ladder. I think he did use a ladder, one we had made there, about fourteen feet long. The switch pole was about nineteen feet to the top. Mr. Sheaff tied in some of the wires at the top of the switch pole. I think I tied some myself. The wiring from the switch pole over to the house,

I think Mr. Sheaff and I put in. I don't  
508 remember whether I used a ladder or climbed up with climbers. I suppose I got the material there that that ladder was made of. It was made of two by fours, I think, and cross pieces nailed on. I think [379] perhaps Mr. Granquist made it. I am sure he used one in the construction station. This model just represents a switch. That block there is supposed to represent a galvanized iron frame, put to scale about the length of that, about the width; and in depth it is somewhat deeper than that block; the scale about fifteen inches in depth.

509 That was made out of galvanized angle iron.

You didn't go up to work these switches this way, it was done from the ground. An extension of the galvanized frame—three extensions, angle iron extensions—served to support what is known as the rock shaft, simply a piece of steel shafting; and on this rock shaft there were three pins supporting insulators; each of the insulators had a cap at the top of it, which was fastened to the blade by means of a connecting rod or connecting strip; and one of the

(Testimony of R. H. Halpenny.)

pins had an extension on it, extending below  
510 the rock shaft; this in turn was connected to  
a small crank, which crank was fastened to the  
top of a galvanized pipe, termed an operating rod;  
and by turning that pipe by means of the handle at  
the lower end, the rod would be made to turn, the  
crank would turn; that, in turn, would pull this pin  
I have referred to as extending below the rock shaft,  
through a certain angle, which would throw the in-  
sulators either forward or backward; and  
511 that would raise the blades, raise them simul-  
taneously. When you threw that switch  
there would be an insulator here that would  
throw, this whole insulator would swing, and the  
blade would come up that way. That was worked  
with a crank set down here between the two,—  
a cast iron handle with a piece of wood at the  
end of it. You turned a half circle to turn that  
switch on or off. That was a piece of three-quarter  
galvanized pipe, I think. That was insulated by  
means of these insulators from the rock shaft.  
512 There was not any current in that pipe at all.  
There was a board placed there at some time, I  
imagine [380] to stand on when that was being  
turned. I recollect seeing a box there. I don't think  
at that time there was a platform there that was in-  
sulated from the ground with some of these insulat-  
ors. I am not sure that there was one at that station,  
or not. I have placed some at switches. My idea in  
placing those insulated platforms at those places was  
for protection in operating the switch. It was con-



(Testimony of R. H. Halpenny.)

sidered that it might be dangerous at any time; not necessarily dangerous at the time. I would  
513 say that was not dangerous, and then qualify that by saying that so long as the insulation remained perfect, that it was not dangerous; the insulation of the insulators remained in perfect condition on that switch, which would not be dangerous except for the possibility of that insulator breaking down, and the wire in any way becoming connected with the frame-work. If one of the insulators cracked, it might go through, over the surface of the crack. If one of the insulators cracked, and it became connected through that crack with electricity, this would be dangerous here to handle this  
514 rod without being insulated.

Mr. GEDNEY.—Q. An ordinary man looking at that thing could not tell whether that was cracked, or not, could he?

Mr. CANNON.—Object to that as immaterial.

Mr. GEDNEY.—I want just to get out what the insulator is, that is all.

Mr. CANNON.—Objected to as irrelevant and immaterial, outside of the issues, in no way connected with this accident, directly or remotely, or with any charge in the pleadings.

The COURT.—I will allow the question; you may have an exception.

Mr. CANNON.—We note an exception. [381]

The action of the Court in allowing said  
515 question to be asked and answered is here assigned as

(Testimony of R. H. Halpenny.)

The WITNESS.—By looking at it?

Mr. GEDNEY.—Yes.

A. He might, or might not.

WITNESS.—(Continuing.) These insulators are made of glazed porcelain, a very fine grade of porcelain. I would not say they are very brittle. They would not stand being hit with an axe, or hammer. A surge on the line would sometimes break them, but it has a tendency to flash over rather than to break. The result of lightning would be the same as a surge.

Lightning induced from clouds, and the result-  
516 ant surge, might or might not break them. I doubt that a runaway at the plant would break them. There is a possibility of a runaway at the plant. When a load is shut off of a wire that much power is taken off the generator, by the reduction of the power supplied by the prime mover. If there were sixty thousand volts coming in on these wires and they are carrying a heavy load at the Nevada Mines station, and this switch is suddenly  
517 opened, it would not necessarily *through* too much power on the rest of the line. The generator at the other end generating this electricity is doing enough work to supply all this power at the different places. If they suddenly stop using electricity at some one or two points, it is not usually the case that the generator is then generating too much power. A runaway is simply an increase in speed, due to any one of several causes. To answer that, one of the causes would be taking part of a load off, I would have to qualify it by saying that such a



(Testimony of R. H. Halpenny.)

condition would not exist in the ordinary  
518 plant. The governor takes care of that.

Mr. GEDNEY.—Q. The governor takes care of that; [382] now just explain what that governor is, and how it takes care of it.

A. Well, you are all familiar with the principle of the fly ball governor, that is used on steam engines, and stationary; that same principle is made use of in the hydraulic governor with certain modifications and adjustments, using oil under high pressure, and the admission of this oil by the governor itself; by the primary operating mechanism of the governor, this oil is admitted to the cylinder, which, in  
519 turn, moves the controlling gates or needle, which allows a certain amount of water to flow, or causes that amount to diminish.

Q. In other words, it is an automatic contrivance that works from the volt-meter, that shuts off part of the water when there is too much load put on the line?

A. No, I never heard of one working from the volt-meter.

Q. What does it work from? A. Speed.

Q. Then it is an automatic contrivance, that automatically regulates the amount of water, so that that regulates the amount of voltage, isn't it?

520 A. Not directly; not in itself; the governor takes care of the speed only.

Q. Well, the speed takes care of the voltage, doesn't it?

(Testimony of R. H. Halpenny.)

A. It is one of the factors that enter into the generator.

Q. At the time of the accident was there that kind of appliance at the power station?

A. A governor?

Q. No, this automatic contrivance that shut off the power. A. Yes.

Q. Are you certain about that? [383]

A. I am pretty sure of it.

Q. Is it not a matter of fact at that time at the power station the man watched that volt-meter, and when the thing went to running away, that he  
521 shut it down; and that automatic appliance has been put in that power station since?

A. No, that is not true; that is not correctly stated.

Q. Just state it correctly.

A. The governor was there at the time; a man did watch the voltage and control it by a needle-valve on the exciter.

Q. Then if that man left his station for any time, there was liable to be a runaway on the plant?

Mr. CANNON.—Object to that as conjecture, incompetent, irrelevant and immaterial, and outside of the evidence.

522 The COURT.—You can answer whether there would be any control there, or regulation.

Mr. GEDNEY.—Q. If that man left his station, would there be any control or regulation?

Mr. CANNON.—Object to that as conjecture, in-



(Testimony of R. H. Halpenny.)

competent, irrelevant and immaterial, and outside of the evidence.

The COURT.—You can answer whether there would be any control, or regulation.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 33.**

A. The amount of current was not regulated there directly.

WITNESS.—(Continuing.) It was that  
523 man's duty to stay there and regulate the voltage. If he was not there, the speed would regulate the voltage in that case. A man would have to be there for voltage regulation. As the load would change, the speed would change slightly too; suppose a certain [384] load was being carried, and that was changed, the characteristics of the generator would cause the voltage to change slightly, and that little difference would be taken care of by the change in the field strength of the machine, this change being effected by the operation of this needle-valve. The man operated the needle-valve when it was necessary.

524 Mr. GEDNEY.—Q. Now, if there was a sudden throwing off of power, and that man didn't immediately regulate that needle-valve, it would cause a surge on the line, would it not?

Mr. CANNON.—Objected to as incompetent, irrelevant and immaterial, and outside of the issues. The issue charged in this complaint is that the plaintiff received his injuries at the live end of the wire

(Testimony of R. H. Halpenny.)

or pipe in the lightning-arrester; and there is no charge in the complaint that he made any connection with, or received any spark, either in  
525 contact or by jumping, from the dead wire. It is a matter entirely outside of this case.

Mr. GEDNEY.—It has a great deal to do with how far that spark would jump; that is one of the issues in this case.

The COURT.—If that is the case, go on.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

### **Error No. 34.**

A. Under the conditions then I would not say it would cause a surge; the loads were not heavy enough.

526 WITNESS.—(Continuing.) There were very small loads on the line. If they had been turned, it would hardly be spoken of as a surge, it would be of such small value. A very light [385] load was carried at that time at Bodie and Aurora. At the Nevada Mines station at Fairview a load of one hundred and fifty or two hundred horse-power was being carried, something like that—small. There wasn't a load being carried at that time at Wonder. They were not using electricity so far as I know at the Wonder mine; they were not  
527 getting it from the Pacific Power Company. I will retract that statement; I was thinking of the 13th of June. At the time of the accident, on the 18th of July, they could not be said to be using power



(Testimony of R. H. Halpenny.)

at Aurora, nothing but some lights. Bodie could almost be omitted too; the two stations at the end of the line were about the only ones. The Nevada Wonder was using power in varying amounts. It was a light load, as I remember it that day. At the

528 Nevada Hills, I don't know how much they were using that day. At that time of day it

would be an average load for them, I guess, perhaps three or four hundred horse-power. I don't know how much horse-power was being generated that day. There was simply enough being generated to take care of the loan on it. I suppose the Nevada Hills would be using about half of what was being generated. If you threw off half of what was being generated, I think it would not cause a surge on that amount. It would cause a slight rise of voltage, but

529 a surge is a term that is usually used to describe something that is sufficient in intensity to possibly cause trouble; of course, any

sudden transient—any transient change, might be termed a surge, it is of that nature. If you suddenly opened a switch and threw off half of the power, I don't say that it would not cause a surge; I said it might possibly cause a slight rise. If you suddenly opened a switch on a line whereby you discontinued to use half of the electricity coming over that line, it would not necessarily or ordinarily cause a heavy surge on that line. [386] It all depends on

530 the characteristics of the line, the amount of load, and several other things. If the load was small, half of it would not amount to much. This

(Testimony of R. H. Halpenny.)

line that day was not furnishing by a good deal all the power it had been built to furnish. The line would carry easily six or seven times that much at that voltage, I should say; the amount of power that was actually being used that day at those stations.

Mr. GEDNEY.—Q. If there was a surge on this line, caused by the sudden throwing off of  
531 power, it would make this handle here a dangerous thing to have hold of, wouldn't it, by reason of the fact that it might break one of the insulators?

Mr. CANNON.—Objected to on the ground it is incompetent, irrelevant and immaterial, and outside of the issues.

The COURT.—The ruling will be the same.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 35.**

A. It would be very remote.

Mr. GEDNEY.—Q. Very remote, but it is possible, even probable, isn't it?

Same objection, ruling and exception.

532 The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 36.**

A. No, not probable by any means.

Mr. GEDNEY.—Q. Supposing lightning struck the line, back on the line some place, that would cause



(Testimony of R. H. Halpenny.)

a surge, as I understand it?      A. Yes. [387]

Q. And that would make this handle a dangerous contrivance, would it not?

Mr. CANNON.—Objected to on the ground it is incompetent, irrelevant and immaterial, and outside of the issues; all of the evidence, both on behalf of plaintiff and defendant, is that there was no lightning on the line that day.

Mr. GEDNEY.—Not at Fairview; we don't know about that at Bodie.

Same ruling and exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 37.**

A. It might be considered dangerous.

WITNESS.—(Continuing.) A surge or anything of that kind on the line, if it was of sufficient force, would cause the lightning-arrester to work without there being any lightning on the wire. If a man was standing hold of one of these dead arms when that surge crossed there, he would feel it. It might and might not burn his hand. It would all depend on the nature of the ground. I consider that a very good ground, although there are four turns in the wire that I know of. There would be one where it came to the ground, one where it got to the pole, one at the top of the building. I would not consider where it went up to the pole a turn—the pole held the wire at such a level that the two spans were about the same distance from the ground. It

(Testimony of R. H. Halpenny.)

ran then practically level from the top of the roof and there was one turn that went down into the shaft. That would make four turns, and then the plate was suspended in the water. That water was not chemically pure. I know that from the appearance of it and the smell. It was an accumulation of dust that had [388] blown in, and mineral particles held in suspension, and many things you will naturally find in an old shaft. Very lightly vegetable decay. The mineral particles might be held in suspension, certain things from mineral, sufficiently small. We always consider water,

536 unless it is pure, a good conductor. You take it for granted that there must have been chemicals or minerals held in suspension in that water. If that arced it would follow the conductor. That is two number four wires. The size of the high tension wires is number four. There were two of them. The size of the wire that went from the dead arms, down, I think was number four. I believe that was a single wire.

Mr. GEDNEY.—Q. Well, in your opinion as an expert, do you think that a charge which would  
537 be sufficiently strong to jump this gap, would follow those two wires from the ground up alongside the building, and make four turns into the shaft?

A. Well, if it didn't wish to follow it from the ground, it would remain in the ground; that is the point it was supposed to be taken to.

Q. Then a man standing there would be practically



(Testimony of R. H. Halpenny.)

as good a conductor as that wire, if it went off the wire into the ground, wouldn't he?

A. Not by many hundred per cent.

WITNESS.—(Continuing.) It would be a  
538 very much smaller resistance than the man himself. If a man was holding on to one of these dead arms, it would perhaps shunt a small portion, an infinitely small current through his body, depending altogether on the nature of the two resistances. The sparking distance for that gap is about fifty-six thousand volts. That would be fifty-six thousand volts between the wire and the ground. That would be about eighty-seven or ninety [389] thousand volts on the line between wires. Fifty-six thousand on the wire makes thirty-two thousand between the wire and the ground, approximately—a little more than fifty per cent.

539 Mr. CANNON.—That ought to be fifty-five thousand.

Mr. GEDNEY.—Q. Now, if there is fifty-six across here, it would be nearly double between the wires, wouldn't it?

A. No; to be exact, it is 1.732.

WITNESS.—(Continuing.) That would be, as I have said, about eighty-seven thousand volts. If there were eighty-seven thousand volts came down that wire, and jumped across there, the way this was arranged, the electricity would go to the ground.

Under that construction the potential would be  
540 diminished by the discharge of the lightning-arrester. Fifty-six would cause the jump.

(Testimony of R. H. Halpenny.)

All the electricity would not go that way, because it is still connected with the plant; the generator is still running; the arrester is just there to take momentary or dangerous rises of potential. It is necessary to have the cement blocks in order to prevent a severe strain on the apparatus at the plant. It tends to limit the flow of current to the ground. When it is a dead ground, I can't say that it takes all the current off the wire. If measured right here at the point of

the dead arm, before it jumps, the voltage  
541 would be fifty-six thousand. I never heard of

an instance were a man was standing on the ground holding a live wire with fifty-six thousand volts in it, that he was not burned. If Mr. Sheaff had been standing, having hold of that dead arm that day, and this had gaped, he would not necessarily have been burned. Well, you will have to consider what drop there will be be, on ohmic drop in that

short length of wire, that is altogether what  
542 would [390] determine whether or not he would be burned. I would not care to say that

he would not feel it. I could not state that he would not be burned, because I would not know what the character of the ground was. When I sent Mr. Sheaff over there, I knew it was safe for him to work where I sent him to work. He was not supposed to take hold of it. If he did take hold of it, if he was wrapping a string around there to get the perpendicular to the ground and that current had come at

that time, he would not necessarily have been  
543 burned. I would not say that he probably



(Testimony of R. H. Halpenny.)

would. I would not say that he would not without knowing the exact condition. When I was constructing this lightning-arrester there was reason why I could not have constructed it higher than it is. We wished to keep the dead-horn a sufficient distance below the live line. At the same time giving the two horns sufficient spread between one another. If the switch had been ten feet higher, this dead arm could not have been practically ten feet higher, because if

you raise the dead arm ten feet higher, you  
544 would have to raise the live arm ten feet higher, and that would shorten it up, so you would not have hardly any room at all. If the live wire came down practically four feet of where it is, and the high tension wires were raised, I don't think you can get sufficient spread between the arms by making the live horn that short. One horn doesn't need to be any longer than the other. If this were simply raised up here four feet the same spread would not come. The reason why the wires going  
into the building could not have been raised  
545 higher was because the building was constructed that way. There is no reason why the building should have been made higher. The wires coming into the switch came on a slight angle dropping down to the switch [391] from the last pole. I could not say there was five feet cut off the last pole. The switch could not have been higher because it was desirable to take the wires leading from the switch to the building, into the building at the level, in a level position. They are not always taken

(Testimony of R. H. Halpenny.)

in that way. The wires on the inside of this  
546 construction go in there and make a curve.

After they get in here on a horizontal line, they turn down on to a vertical line. If they came in on a slope, that turn would be less abrupt—be greater or less than a right angle—it does not make any difference. There is this point to consider there; one of the reasons it is just as well to have them level, or lower, in fact, moisture will run down that wire, and if atmospheric conditions are just right, will help

the formation of sleet on that insulator, on the  
547 bracket arm of the building; that is one consideration to be taken into account. There is

another reason; the use of that switch there necessitated a level position of the wires. I spoke about some movable rock insulators this morning that the wires go down as they do from the insulators that are indicated there in the model; they very likely will interfere with the movement of those insulators, if the switch itself were not level. It undoubtedly would interfere with them. It would interfere more than where the wires were on a level, because they are

above the insulator now, off above without in-  
548 terfering. I am speaking about the other insulator, the insulator back of that shown there on the model; there is another about eighteen inches back of that, another set. That would be about eighteen inches further toward the building. They are the ones that rock. If the wire was set on an angle from them, I know the switch would not work so well. We have had that trouble before. With this size of



(Testimony of R. H. Halpenny.)

a building that is the highest that we could build the lightning-arrester. [392] The lightning-arrester at

Wonder is built very similar. It is to one  
549 side. It was put to one side because you don't  
have the same ground to work on at Wonder.

It is over six feet. The live arm of the arrester is in the neighborhood of six or seven feet, probably seven feet; I know it is at least seven feet. I would not say it was eight feet. The dead arms may be eight feet, but I don't think the live arms are eight feet. They would not both be the same. The ground

sloped there about one foot in six. This  
550 ground at Fairview was level. Down on the hill below it is steeper at Fairview—possibly twice as steep as that. The switch posts could have been moved back and the posts made higher. In all the work that I directed Mr. Sheaff, we were working on dead wires, excepting the low voltages. We connected up one hundred and ten and one hundred and twenty volts in the process of drying out and putting up lights in the station. I think some changes were made with it on, very likely would be. My recollection is that Mr. Sheaff made some changes.

551 We used one hundred and ten volts for lighting in the station; sometimes it was necessary to move the position of the lights from one place to another, and it was some such removal or change that this work was done. Mr. Sheaff handled some live wires in the Wonder substation. He was making a connection near an insulator. The purpose of that wire was to carry a current to an incandescent lamp.

(Testimony of R. H. Halpenny.)

Mr. GEDNEY.—Q. Did you see him have hold of the wire? A. I cannot answer it yes or no.

WITNESS.—(Continuing.) Some of the  
552 wires that were used inside of the substation were insulated and some were not; probably half of them were not insulated. Well, I might say this, that the insulation on the wires that were insulated, [393] did not amount to anything, might be considered the same as bare wires at that voltage; so you might say they were not insulated, any of them. I told Mr. Sheaff of it, if he didn't know that fact, while we were working on these wires. I told him that that insulation was no good at that voltage.

That was when we were using them, and there  
553 wasn't any electricity in them at that time.

When we were drying out these transformers, I didn't do all of the connecting and wiring. What Mr. Sheaff did, I told him just where to make a connection of a certain wire, and I put the thermometer down in the box or can and showed Mr. Sheaff just where to put that in there. He was supposed to put it back in the position it was in when he pulled it out. During the night shift he was not supposed to do any

work except keep the place clean. The operation  
554 tion carried on during the drying out required him to turn the button, or throw off the switch, pull up that thermometer on the end of the string, look at the thermometer, and put it back where it came from. He had to watch the volt-meter and ammeter. They would be very good indications in case of trouble. He knew what the normal current



(Testimony of R. H. Halpenny.)

taken was, what the flow was, and any increase over that amount would show that something was wrong. There was a needle on that where you could see if it ran up past that. I told him that if it did  
555 run up past that, that would mean trouble. If there was trouble on the line he was to pull the switch and notify me. During all this time there were times when Mr. Sheaff was working around electricity when he was not under my immediate supervision. I would not be in the station all the time, and would leave him to carry on certain jobs, making connections back of the board. After I told him just where to make the connections I left him there to make them. I left him there to place insulators, run wires along the [394] wall.  
556 I would tell him where I wanted him to run them. He made connections, disconnected switches, bent wires and taped up joints. I would show him how to do those things if it was necessary. There were several times when it was not necessary. From Mr. Sheaff's actions when he first came to work under my supervision, he appeared to know about electricity. He used some of the simpler electrical terms that are in common use among electricians. When I had him build that helix, I told him how to do it. I didn't in every case show Mr. Sheaff  
557 how to do it, nor did I tell him how to do everything, he did under my supervision. Things that he did after my telling him how to do it were placing insulators, stringing wires and making joints. I showed him how to make certain joints and showed

(Testimony of R. H. Halpenny.)

him how to wrap the joints that were wrapped. I think there were some kegs left there when Mr. Sheaff got hurt. I don't remember whether, the day that lightning-arrester was put up, that Mr. Sheaff arranged those barrels that were left there along in front of the building. The next day after the  
558 accident there was a danger sign on the switch post at Fairview. I am not sure who put it on there. It was a piece of blue-print paper about twelve by eighteen inches. When Mr. Sheaff was going toward a wire that was exposed, I would say to him, "Look out, Mr. Sheaff, that is hot," or something like that. When he would be working in the neighborhood of any wire which he could not see, or when he appeared to forget the existence of,  
559 I would say, "Look out, Bill, don't go too close," or something of that nature. I had warned him on several occasions against different wires that were in the building. They were hot. He seemed to understand the situation that those wires were hot after the first warning. Before that, I would not say that he didn't seem to know that the wires [395] were hot. He seemed rather to forget that those wires were there, and that was the reason I warned him. During all the time Mr. Sheaff was working under me, I did all the directing  
560 and supervision. I told Mr. Sheaff what to do and what not to do. The day that I sent him to Fairview, I told him that day just what to do. I told him to dig those holes and set those blocks. He dug the holes and that was part of what I told him



(Testimony of R. H. Halpenney.)

to do. Even up to that time I had directed him and supervised all the work that he had done; and up to that time he had continually been under my immediate supervision. He had been away from me to do work by himself. He built the line himself. That was something like three-eighths of a mile from me, I believe. That was working absolutely on dead wires. I at that time considered him an electrician's helper. This was not the first time that Mr. Sheaff was sent out by me from where I was to work in the vicinity of live wires. He had been sent to each of the two stations, Fairview and Wonder. That is the first time I ever sent him twelve miles away, as far as that. Before that, I had never sent him any great distance to work around live wires. We never had anything to do with the wires when they were alive at that high voltage. We worked around the lower voltage wires—sixty-six hundred volts. I knew the dangers attending this apparatus at Fairview before I sent Mr. Sheaff there. I knew what would happen to him if he came in contact with one of those live arms. I instructed him before I sent him to keep away from those. I told him not to touch any of the connections, or make any changes. By "touch the connections," I meant not to touch any of the parts of the arrester itself. That meant he was not to touch any of the live parts or connections, and the parts on the arrester, meaning by that, the horns. By "touching the connections" I meant not to touch any of the live parts. [396]

(Testimony of R. H. Halpenny.)

Mr. GEDNEY.—Q. Why did you say don't touch any of those live parts, or don't touch any of those other parts?

A. Well, I will explain it in this way, that at the time of sending a man to do a piece of work, after he has done similar pieces of work, and worked in the vicinity of wires, you naturally make an assumption that he knows by previous experience what he should do in the way of safeguarding himself.

WITNESS.—(Continuing.) I assumed that he knew the danger there, and that was the reason I didn't instruct him. I knew what experience Mr. Sheaff had had under me dealing with live wires at the time I sent him over there. I knew how this machine could become dangerous. I know how high those arms were off the ground, and I knew if a man came in contact with them, what the result would be. I didn't have him make those connections because I wanted to attend to that myself. It wasn't because Mr. Sheaff wasn't competent to do it in my estimation. The reason I did not instruct Mr. Sheaff to do it was because I wished to wait until I got over there, and make arrangements for a shut-down long enough to work on this. At the time of making connections, or taking those tie wires off those arms, I certainly would throw that switch.

Mr. GEDNEY.—Q. Then when you took the tie wires off it would be a dangerous place, would it not?

A. It would.

566 Mr. CANNON.—Objected to as calling for



(Testimony of R. H. Halpenny.)

the opinion and conclusion of the witness.

The COURT.—I will allow that.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 38. [397]**

A. It would be dangerous because at the time those wires were taken off and working on them, the pipe might become loosened, and slip over, decreasing that gap distance.

Mr. GEDNEY.—Q. Then, you do not consider that Mr. Sheaff was competent or capable of taking care of himself in putting on the wire, did you?

567 Mr. CANNON.—Object to that on this ground; that he was not directed to do anything of that kind, and therefore the question as to whether he thought he was competent to do that or not, is incompetent, irrelevant and immaterial to any issue in this case.

The COURT.—I will allow that question.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as

**Error No. 39.**

A. I considered him perfectly competent to do that.

568 WITNESS.—(Continuing.) I was going to make the trip from Wonder, a distance of sixteen miles, over there to do that work, because I was

(Testimony of R. H. Halpenny.)

going out by way of Fairview—leaving that part of the country. I wished to make certain arrangements with the Mining Company. I didn't have Mr. Sheaff do all that work because the Mining Company usually required some few hours—a day, if possible—notification of a shut-down for any length of time.

We had a telephone at Wonder. If I notified them at Wonder before Mr. Sheaff left there that I was

going to shut that down, it would not have  
569 given us time. They would want about  
twenty-four hours. I didn't know twenty-

four hours before Mr. Sheaff went over there, that he was going over there to make that connection, or do that work. It took him about half a day to make those blocks for [398] that Fairview substation.

That was some time before the day he went over there. We knew we were going some time. I think it is not a fact that Mr. Sheaff and I were going

together over there that morning. The rea-  
570 son I remained was because I was waiting for

some bushings and tape that come in that night. That was the night Mr. Sheaff left there in the morning. It was not my intention to go over there that morning, with Mr. Sheaff. The opportunity presented itself for him to go that night, or early in the morning, because of the coming over of an extra wagon, as I remember; a stage running—this was not the regular stage, as I recall it now, it was an extra trip the stage driver had made; and since the material arrived that night, the



(Testimony of R. H. Halpenny.)

571 material that I was waiting to use myself, and  
the opportunity for sending these blocks over  
presented itself, I sent the blocks over, and sent Mr.  
Sheaff over to put them in, thinking that it would  
hasten matters that much. I first informed Mr.  
Sheaff that evening that he was going over *the* Fair-  
view that morning. There had not been any talk  
about it that I remember before that time. The day  
of the accident I did not notice any surges on the  
line, or power being turned on or off. I did not  
notice anything out of the ordinary with my  
572 volt-meter there. I did not know at the time  
that Mr. Sheaff was hurt. I was evidently  
therefore not watching the instruments at that time.  
I don't know whether there were any surges on the  
line at the exact time of the accident, or not. There  
was a telephone in the substation at Fairview,  
fastened on the wall on the inside of the building.  
The wire went out through the tin. There was per-  
haps a great deal of vibration on that wire at differ-  
ent times. This vibration was set up by the wind.  
The vibration on that wire was not what I  
573 would speak of as loud. I don't believe you  
could hear it fifty yards away. [399] If  
that telephone was buzzing when you were out in the  
vicinity of that wire, I think you could hear the  
transformers from the outside of the building. I am  
sure you could. I have known of men in the west  
working upon high tension wires where there were  
seventeen thousand volts. They would work on it  
in the ordinary way. They would work on the pole.

(Testimony of R. H. Halpenny.)

Whether a man could touch a wire containing seven-  
teen thousand volts of electricity on a pole,  
574 if he were on a pole, and was not otherwise  
insulated, depends altogether on the character  
of the pole.

Mr. GEDNEY.—Q. Ordinary poles as they are  
used along on these high tension systems.

A. In a dry locality, it might be perfectly safe.

Q. In a dry locality, where would that be?

A. In the desert.

Q. Down by Wonder and Fairview? A. Yes.

Q. Would you consider it safe for you, yourself,  
to work upon a wire carrying seventeen thousand  
volts, upon a pole down by Fairview or Wonder?

Mr. CANNON.—Objected to on the ground it is  
incompetent, irrelevant and immaterial, has  
575 nothing to do with this case, and has nothing  
to do with the competency or incompetency of  
Mr. Sheaff.

The COURT.—I will allow the question.

Mr. CANNON.—I note an exception.

The action of the Court in allowing said question  
to be asked and answered is here assigned as

**Error No. 40.**

A. I would consider it safe under certain condi-  
tions.

WITNESS.—(Continuing.) You would certainly  
have to prescribe the conditions. That would be a  
pole that I knew was dry. Whether it was  
576 dry would depend on the age of the pole and  
the character of the wood. I have worked on



(Testimony of R. H. Halpenny.)

wires carrying [400] twenty-two hundred volts when I was up on a pole. I know from hearsay the amount of electricity they use in electrocuting men in Sing Sing. It is seventeen hundred and twenty-two hundred. Twenty-two hundred volts up on a pole would kill a man if he came across two of the bare wires at the same time. I would not say that there would be no doubt about his being killed. He might perhaps break his hold on the wire, and  
577     fall; and there might be a dozen things happen. The laborers' wages there were three and a half to four dollars. Linemen's wages were four and a half. Mr. Campbell was paid four dollars. Mr. Campbell was not given overtime enough to make it five dollars. He complained when he was paid the four dollars. The Pacific Power Company never paid through me, as foreman, any more than four and a half a day that I remember of. I considered Mr. Sheaff a lineman by paying him four and a half a day. There is quite a good deal  
578     of difference between a lineman and an electrician. An electrician would require the most knowledge. When I was talking to Mr. Sheaff over the 'phone, I think there was nothing said about the live arms of this arrester or anything of that kind. I don't think I warned him of his danger at all over the 'phone. I was talking to him over the 'phone about eight o'clock. That was after breakfast, and I had gone to the substation. He called me. That 'phone did not connect up with the substation at Fairview. The Nevada Hills people

(Testimony of R. H. Halpenny.)

had a 'phone in their office at the mine.  
579 While I was at Wonder, I was boarding and  
staying at the hotel. Mr. Sheaff stayed there  
too. I am slightly acquainted with Mrs. Adams. I  
knew her a few days before the accident. I knew a  
young lady who was working for her as waitress at  
that time.

Mr. GEDNEY.—Q. Did you in the dining-room at  
Mrs. Adams' hotel on the morning of the 18th of  
July, 1911, between [401] the hours of six and  
eight o'clock, when Mrs. Adams and this young  
lady who was the waitress were present, say  
580 to them "Did Bill go?" and upon being an-  
swered in the affirmative, did you not say to  
them "I should have gone to Fairview myself in-  
stead of sending Bill"? and did one of them ask you  
why, and did you then say "Well, Bill is not an ex-  
perienced electrician, and I am afraid he is not capa-  
ble of doing that work?"

Mr. CANNON.—Objected to on the ground it is  
incompetent, irrelevant and immaterial, and not in-  
volved at all in any issue in this case. The com-  
plaint alleges, and the answers admits, that  
581 he was an electrician's helper. No founda-  
tion has been laid for the question. The  
place, persons present, and the person who is sup-  
posed to have made the remark or joined in the con-  
versation, is not definitely stated in the question.

The COURT.—I will allow that question. You  
may have an exception.

The action of the Court in allowing said question



(Testimony of R. H. Halpenny.)

to be asked and answered is here assigned as

**Error No. 41.**

A. I don't remember of any such conversation.

Mr. GEDNEY.—Q. Will you say that you did not say it?

A. I don't believe I said the last part of it.

582 Q. Will you say that you said the first part?

Mr. CANNON.—I object to the first part and last part as being rather indefinite.

Mr. GEDNEY.—Q. What part of that conversation did you say?

A. I won't say that I said any of it.

Q. Would you say that you didn't say any of it?

A. I will say that I didn't make the statement that I [402] should have gone myself.

Q. And you say that you didn't make the statement that Bill was incapable of doing that work?

A. No, I didn't say that.

583 WITNESS.—(Continuing.) I got the news that day that Mr. Sheaff had been hurt about 12:30, by a message calling me to the 'phone. I was at lunch at the time. Just immediately after that I remember Mr. Adams asking me about the accident which he had heard about. I don't know if that was in the washroom. That was sometime in the afternoon of the same day that Bill got hurt. I think that was in Mr. Adams' hotel that that conversation took place. I don't know that I made any such  
584 assertion as "I am sorry, I felt this morning that I should not have sent Bill over there."  
I would not say that I did not say it. I didn't

(Testimony of R. H. Halpenny.)

feel that morning, before I knew of the accident, that I should not have sent Bill over there. I did not have that kind of feeling at all.

Mr. GEDNEY.—Q. Then did you say to Mr. Adams at that time and place, when you two were present, that you felt that morning that you should not have sent Bill over there?

A. I might have said it, and not mean it in the same light you are trying to make it appear.

585 Q. Well, did you or did you not say it?

A. I can't say.

Redirect Examination by Mr. CANNON.

These signs were on a blue-print tacked on a board. I was Mr. Sheaff's boss; I was his superior. He looked to me for instructions and directions as to what to do. Mr. Sheaff was ordinarily called Bill among the men there. I don't remember of Mr. Campbell making any statement in the presence or hearing of myself, Mr. Herring and myself, and of

any of the others present at the time this  
586 lightning-arrester was being [403] built at

Fairview, that it was criminal negligence to build that lightning-arrester that way. I don't remember of anybody saying in my presence there in any conversation that this was a cheap construction, or a cheap company, or anything of that kind. I knew Mr. Sheaff had pliers of his own. They were used for cutting wires, and wrapping wires. There is no occasion for a laborer in that work to have pliers. In these switch-boards, in these two sta-



(Testimony of R. H. Halpenny.)

tions, there was a board plank placed in front of the switch-board. That plank was put there as  
587 an additional precaution to an operator. The floor was of concrete, which is considered bad to stand on, if you touch live parts, or if there should be any leakage; the board was to serve as additional precaution for one operating the switch. I cannot say whether Mr. Sheaff put it there first or not; but we always used the board to step up on when operating the switch. There was not any board at any other place on that floor for that purpose except at the switch. The first time I distinctly re-  
588 member seeing Mr. Sheaff on a pole was the time he was on those switch-posts. At that time we were tying the wires on clamps at the top of the insulators—castings. He was assisting in tying the wire in. The casting to which I refer is on the top of the insulator, the wire is made fast to that, then turned, and soldered into a lug, and bolted to the switch. He was working on top of the switch-frame itself. These wires from the switch-posts into the substation were put in later. In connection with running these wires into the substation itself,  
589 he was fastening them, stretching them, and tying them in. Mr. Sheaff assisted me in pulling them and fastening them. These wires that were running from the switch into the substation were very nearly level. In case the power should be suddenly shut off at the Nevada Hills, the voltage would not [404] have increased on that wire from twenty-three thousand to fifty-six thousand volts.

(Testimony of R. H. Halpenny.)

Recross-examination by Mr. GEDNEY.

It is hard to say how much it would have increased. I know it would be a small amount. I certainly know it would not be twenty-three thousand. Switching could make that electricity jump from one horn to the other—  
590 switching of very heavy loads, such as we did not have on that system at the time. If both the Nevada Hills and the Nevada Wonder had been turned off at the same time on the 18th day of July, that would not have made that arc across there. It is hard to say how much more it would have taken. At the time Mr. Sheaff was working there, the arrester at Wonder was not enclosed or fenced. The lightning-arrester at Wonder was not enclosed by a fence before this accident.

**[Testimony of Mr. Charles O. Poole, for Defendant.]**

591 Mr. CHARLES O. POOLE, produced as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. CANNON.

I reside at Riverside, California. I am an electrical engineer. I have been in the business about twenty-five years. I first began business as an electrical engineer in San Francisco principally. I went in as a mechanical workman in San Francisco with the San Francisco Gas and Electric Company, at that time the Edison Electric Company. I continued for those concerns about twelve years. With those



(Testimony of Charles O. Poole.)

companies, I was a dynamo-tender, a machine  
592 hand, and finally went as foreman in the repair-shop, and from there to the superintendency of the company. That was at that time the California Electric Light Company. I was superintendent of that company about a year when they consolidated into the Edison Electric Company. I still continued in the same position [405] about four years. After that I went as superintendent of the Standard Electric Company, located in San Francisco. I was superintendent of that concern about three years, and after that, I was sales engineer for the Stanley Electric Company, Pittsfield, Massachusetts. I was with that com-  
593 pany about two and a half years, as I recall it. After that, I went with the Nevada-California Power Company as an engineer. The head office of that company was in Denver at that time—it is there yet. They operate in California and Nevada. They cover a good part of the southern part of Nevada—Goldfield, Tonopah, Rhyolite, Manhattan, Silver Peak, and intervening territory, and in the eastern part of California—on the eastern slopes of the Sierra Nevada Mountains. I am still a chief engineer of that company. I am chief engineer also for several other companies—the Southern Sierras Power Company; the Pacific  
594 Power Company particularly. I was the Chief Engineer for the Pacific Power Company on the 18th of July, 1911, when this accident in question happened. I have been chief engineer

(Testimony of Charles O. Poole.)

ence of twenty-five years, I have been brought into of this company since its inception. In my experience with electricity in practically all of the forms that it possibly can come before any one in general practice, and I am acquainted with lightning-arresters. I have known lightning-arresters

595 ever since I have been connected with the business. In July, 1911, there were several

different types of arresters on the market, and in use on different systems; some of them were what might be called what they term the electrolytic arresters; others, multiple-gap arresters; and the horn gap arresters, such as the one you have before you here, which is in common use, and was in common use at that time. All those that I have mentioned were in common use at that time. There is to

some [406] extent a difference in the fundamental principles upon which they all operate.

596 The electrolytic arrester is presumed to have

the function of keeping the static conditions of the line discharged, so to speak; accumulation of excess potentials are supposed to automatically be discharged through the arresters to the ground; sometimes they work, and sometimes they don't. The horn gap arrester is supposed to take care of extraordinary surges, lightning, and high frequency waves, that pass over a line, and that occur under certain physical disturbances. I found the horn gap most reliable and practical—the horn gap similar to



(Testimony of Charles O. Poole.)

the style that appears in this model with some  
597 modifications. I am not the originator of that  
concrete block idea. That was used quite ex-  
tensively on several different systems, most notably  
in New York State, on the Niagara, one of the  
Niagara lines, Lockport lines particularly; it is still  
in use there. That has proven about as satisfactory  
as any arrester we have been able to obtain. I  
would say that this arrester appearing in this model  
is fit for the purpose for which it is intended. The  
distance from the ground of lightning-arresters  
would be guided very largely by the local conditions,  
as to how far the wires were above it, and so  
598 forth; they must retain a certain distance be-  
tween the horns, and the leading—in wires to  
avoid short circuits, when the arc might go above the  
horns and lap over onto the conductors. If there  
was a short circuit it might cause damage, either to  
the apparatus at the substation, or the power-house,  
or the line in general. For instance, the switch  
poles here, if they were built considerably higher, so  
as to raise the outer part of the high-tension wire  
above the dead wire on the lightning-arrester,  
that would not obviate that difficulty to any  
599 great extent. Arcs are very uncertain as to  
how they will [407] rise, and how they  
shall conduct themselves. The safe manner with  
respect to keeping the high-tension wires away from  
the arc is to keep them as far away from the high-  
tension wires as possible, to keep the horns as far  
away as possible. It is always preferable to keep

(Testimony of Charles O. Poole.)

high-tension wires as near straight lines as you can, to avoid injury to insulators, and things of that character in case of lightning disturbances. There is always more likelihood from injury from lightning disturbances with sharp corners.

600       Mr. CANNON.—Q. Take for instance this situation appearing here, assume that this Fairview substation is built on the top of a knoll or hill, and that the ground on the westerly side slopes down, to say one foot in four, or a twenty-five per cent grade or more; and the poles leading to that switch are on that hillside, and the pole next to the switch-poles down on the hillside to some extent, would it be proper construction, in your opinion, to raise the switch-poles so as to make an angle with the wires coming up from the next pole to it,  
601       and then going down into the substation?

A. I don't believe it would improve the construction or the operation.

Q. Would it make or render the safety of the insulators at this point more or less dangerous?

A. It would be more dangerous.

WITNESS.—(Continuing.) It has always been my practice to put fences around the arresters to keep strangers out, or cattle or stock from wandering in. The purpose of the fence is to keep anyone from coming in contact with it, or interfering with it in any way. On lightning-arresters that I have spoken of, these electrolytic and others, there are those  
602       where a person could come into contact with them and get a shock. The practice is to get



(Testimony of Charles O. Poole.)

electrolytics particularly [408] set right on to the ground. With respect to the electrolytics setting on the ground, the entrance wires to the electrolytic tanks are all exposed, and can be reached, most of them, from the ground; the tanks themselves sitting on the ground, do not offer any particular hazard, in as much as they are in contact with the ground. They have, in connection with them, horn gaps similar to these, with the exception that they are  
603 smaller; these contacts are all exposed, and can be reached, many of them, from the ground. In my experience and practice, horn gap lightning-arresters have been built close to the ground.

Mr. CANNON.—Q. And do you regard that construction—I will ask you the general question: State whether or not you regard this construction as it appears here in this model, with the fence around it, built with the live wire five feet nine inches from the ground, and with danger signs reading “Danger, high voltage, keep out,” on one of the switch-posts—state whether or not you regard that as a reasonably  
safe construction?

604 Mr. GEDNEY.—We object to the question on the ground it is incompetent, and a question for the jury.

The COURT.—That is the very question for the jury to determine, is it not?

Mr. CANNON.—Well, I don't know; it seems to me that the line is rather close, as to whether it is a matter for expert testimony, or a matter for the

(Testimony of Charles O. Poole.)

jury, so we ask the question and take a ruling.

The COURT.—Very well; the objection is sustained.

Mr. CANNON.—We note an exception.

The action of the Court in sustaining said  
605 objection to said question is here assigned as

**Error No. 42. [409]**

WITNESS.—(Continuing.) I have had occasion to be in and out of power-houses, and other places where electrical apparatus was used, carrying high voltage and low voltage, during the last twenty-five years. I have been in and out of many power-houses, and other places where that kind of machinery and appliances are used. I have been in and about such places where employees are commonly and ordinarily brought into close relation with such machinery and

appliances. The rule is general to have in  
606 connection with such machinery and appliances, live and exposed wires within the reach of the employees. I have never known a case where it is possible in power-houses and places of that kind where this electrical apparatus is used, to provide for all of the wires being placed in such position that they could not be reached by employees.

Mr. CANNON.—Q. Assume that the ground wires are particular wires, connecting the three dead arms, carried to the ground, in a trench carried to the corner of the building, and then put on the side of the building, and from the building over one post  
607 to a shaft several hundred feet from the substation, and there fastened to a copper plate



(Testimony of Charles O. Poole.)

immersed in water in a shaft, what kind of a ground would that be?

A. I would call it a good ground connection.

Q. With what kind of a ground connection, what sort of a conductor would you call this dead arm, as respects the other?

A. I would call it a good conductor.

Q. What kind of a conductor would that be as compared with the human body as a conductor?

A. Why, infinitely better than a human body.

608 Q. How is the human body regarded as a conductor?

A. Well, I have measured quite a number from hand [410] to hand, and it varies very materially, depending very largely upon the condition of the skin of the hands, moisture and so forth, varying from two thousand ohms to eight and nine thousand ohms.

Q. What does that mean?

A. It means there is that many ohms resistance, the ohm being a unit of resistance as used in calculations.

Q. What would be the comparison of ohms of resistance between the human body and the conditions you have mentioned, and the ohms of resistance in such a ground as is shown there?

609 A. The resistance of the wire would only have a fraction of one ohm.

Q. And the resistance of the body you say would be about two thousand ohms?

(Testimony of Charles O. Poole.)

A. Anywhere from two thousand to ten thousand ohms.

Q. And that is what you mean, is it, by saying this is an infinitely better conductor than the human body?     A. That is what I mean.

Q. Assuming that any part of a body were placed within four and a quarter inches of this wire, the same distance from the wire as the distance  
610     of the gap, and there should be a surge on the wire sufficient to cause the electricity to jump the distance of that gap, where would it jump, to the body or to the opposite side of the gap?

A. It would naturally go to the path of least resistance.

Q. And that would be where?

A. On the wire.

Q. In considering the jumping distance of the live wire of the lighting-arrester to another point, at the normal voltage carried, what would be the best  
611     kind of a point, in order to get the closest or the longest jumping distance?     [411]

A. A sphere; a part of a sphere represents the most reliable and certain terminals from which to calculate arcing distances.

Q. How are they ordinarily calculated, from spheres or needle-points?

A. Of late they are calculated from spheres; but originally, and until quite recently, they were needle-points.

WITNESS.—(Continuing.) The human body would ordinarily be a larger surface, and offer a



(Testimony of Charles O. Poole.)

greater resistance, and be less likely to take the arc.

Mr. CANNON.—Q. Now, with respect to this dead arm, and the ground which has been described to you; supposing that a lightning charge did come  
612 over the wire, which would cause an arc to be formed at the gap, what would be the chance of safety, or otherwise, if any person should come in contract, should happen to be in contact or near the dead arm at that time?

A. There should not be any great hazard in being near it, or in actual contact with it, if the ground is as represented there.

Q. Assuming the ground as represented, what would happen?

A. The current would pass along the wire, and go to ground.

613 Q. Would that in that case be the line of least resistance?

A. That would be the line of least resistance.

Q. It would follow that, would it? A. Yes.

Cross-examination by Mr. GEDNEY.

If there is a square turn in the wire, it will not follow that around a square turn so well. In constructing a line, you would naturally have that line as straight as practicable. This lightning-arrester could possibly have been built on top [412] of the wires, but it is never usual practice to do that, and  
614 I have never used that system. I have seen the lightning-arrester at Tonopah. It is built alongside the wires. It is partly off to one side; there are several wires there, and several cir-

(Testimony of Charles O. Poole.)

cuits; it is more directly connected to one than it is to the other. The horns are higher, but it is a different type of arrester. It has three horn gaps in series with the ground; it is a different type arrester entirely. It is a horn gap arrester, but has two or three horns in series with each other; and it is necessary to set that up at a considerable distance above

the ground, in order to interpose strings of  
615 resistance that carry down in front of each

horn gap to ground; those resistances require eight, or ten, or twelve feet, as I recall it now, in length, in order to find room for them. There are two arresters at Tonopah, only the resistance is a cement box or block set just to one side, and there is only one horn. That one is not set up on top of the construction. It is down below it, nearly the same

as this; it may be a little higher than this, but  
616 it is below the wires. The Nevada-California

Power Company is the one I refer to. The other one is the same company. The one I first referred to is built higher than the other one, because of being a different type arrester. There are virtually three sets of horns in this one I speak of now. I don't recall the exact distance the lower part is from the ground. I guess probably it must be eight or ten feet, something like that. I think the other one is about ten feet in the lowest part—beg your pardon,

the lowest part is right close to the ground,  
617 within two or three feet from the ground,

There is not a horn coming there that comes direct from the wire, that is within three feet from the



(Testimony of Charles O. Poole.)

ground, but these resistances that I explained carry down within about two or three feet of [413] the ground. The resistances leading from the dead side of the gap came within two or three feet of the ground. I should say the left side of the lightning-arrester at Wonder was somewhere about six or seven feet from the ground. This form of lightning-

arrester is in common use now. The lines that  
618 they are in common use now are the Pacific Gas and Electric Company, operating in California; the Nevada-California Power Company, in California and Nevada; the Niagara-Lockport line in New York state, using it quite extensively; and I think there are several others that I am not just familiar with at this time; I only know indirectly that they use them. My companies use this kind of lightning-arrester now,—The Pacific Power Company and the Nevada-California Power Company, and the Southern Sierras. The Pacific

619 Power Company has a horn gap lightning-arrester in Wonder and Fairview, and in Bodie, and I am not certain about Aurora. I don't know positively what was the height of this lightning-arrester at the time of the accident. I don't know approximately how high it was. Judging from the model, assuming that to be correct, it is somewhere near six feet. It is my opinion that six feet is usual and ordinary construction under similar conditions and circumstances. By similar conditions and circumstances I mean, being limited in territory, and limited in height, and general conditions

(Testimony of Charles O. Poole.)

surrounding the entrance to the building—the  
620 limited territory in which to build it and the  
limited height of the wires above. The reason why the switch could not have been set back here ten feet, and a lot more space been used here was on account of the steep hillsides, or something of that character. I think it would have been possible to have made these wires which entered the switch higher. I don't think it would have been just as convenient to make them higher because of the nature and [414] character of the ground.

621 I think I was there in the spring or early in the year 1911. I don't know of any reason why these switch poles could not have been almost any height, if conditions would have warranted it. If the company had desired to put poles there forty feet high, I expect they could have been put in. I didn't know that from the pole next to this there was five feet cut off, and dropped five feet, after this switch was put in.

Mr. GEDNEY.—Q. If that was a fact would that alter your conclusion as to saying whether or not this is an ordinary and usual construction.

622 Mr. CANNON.—Object to it on the ground it assumes a fact not in evidence.

Mr. GEDNEY.—I have a right to assume it; it is a hypothetical question.

The COURT.—I will allow the question.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as



(Testimony of Charles O. Poole.)

A. It would not make any difference in my conclusion.

Mr. GEDNEY.—If it is a fact that that was cut off, that pole was cut off five feet, then there  
623 would be no reason why that five feet could not have been left on that pole, and this switch been made that five feet higher, would there?

Mr. CANNON.—Objected to on the ground it assumes a fact not in evidence, and incompetent, irrelevant and immaterial.

The COURT.—The objection will be overruled.

Mr. CANNON.—We note an exception.

The action of the Court in allowing said question to be asked and answered is here assigned as [415]

**Error No. 44.**

A. It need not have any bearing whatever on the height of the switch.

WITNESS.—(Continuing.) A switch eighteen feet high is usual construction. Switches vary  
624 entirely depending on conditions, they may be four feet, eighteen feet, or twenty-four feet. There is no regular condition governing it. There is no regular condition as to the height of wire poles. It is not the usual construction to use thirty-five foot poles. The length of the pole used depends entirely on the condition and the territory in which they are used.

Mr. GEDNEY.—Q. Now, the fact that an angle is to be avoided in a wire, that would hold good with a ground wire, would it not?

(Testimony of Charles O. Poole.)

A. That is desirable in ground wires.

625 WITNESS.—(Continuing.) A ground wire that has six or seven right angles in it could be considered a good ground. The best construction is to keep as many turns as possible out of your wires. My recollection is that the one at Wonder is constructed the same as this under the wires.

Mr. GEDNEY.—Q. Now, Mr. Poole, you have been instructed that the ground wire came down from this dead side and dropped to the ground; then it went through a trench to the corner of the building, then up to the side of the building, then  
626 to a pole, then to a shaft, and then down a shaft into water; now that would make one angle where it struck the ground; one where it came to the building would be two; one where it came to the top of the building, three; one where it went to the pole, four; and one where it went to the shaft, five; then if it went straight down the shaft there would not be any other angles or turns; now there were five turns in that ground wire, would you consider it a good ground? [416]

A. Yes, it would be all the better in this particular case.

627 WITNESS.—(Continuing.) For the reason we want some resistance in the ground wire. There would be very small resistance if it was in water. If the water was chemically pure, it would depend on what distance the plate was from the ground. If the plate was hanging in the water clear from the ground, there would be some resist-



(Testimony of Charles O. Poole.)

ance in the water, and the further the plate was from the ground, the more resistance there would be.

Mr. GEDNEY.—Q. Now there would be resistance in that wire with all those turns, and in that plate hanging in the water, now state, if a man had  
628 hold of one of these dead arms, and this arced across, would he get burned.

A. The difference between the resistance represented by the man's body and the ground wire, even under those conditions, would be so great that he should not receive any injurious effects from it.

WITNESS.—(Continuing.) If there is a large voltage of electricity jumps this arc, it would always go to the opposite horn. If a man were holding one of these dead horns, I don't believe a man would be hurt with a ground such as is described there.

629 I would not care to take hold of it; I would not care to take any chances on it—I don't see any necessity for doing it. It would go to the other arm, then naturally go to the ground, and if the resistance on the ground is sufficient that current may be broken up. If the resistance is sufficient, then it would simply be a question as to whether there was some resistance through the man or more resistance through the ground wire. I say this is not a  
630 dangerous place for a man to work. With the description of the ground you have given me, I would say it is safe, and I would have no [417] hesitancy in going on and handling it—I have done such things myself. I said a few minutes ago that I would not on the conditions you spoke of of an arc

(Testimony of Charles O. Poole.)

going across there. If you have a lightning-arrester that condition is what it is there for. If you have a runaway on the power-house, I don't think you would get it. If you get a surge on the line, if it is sufficiently high, you are liable to get it.

631 Mr. GEDNEY.—Q. If you get induction from the clouds, without any lightning, you are liable to get it, aren't you?

A. Well, that would be lightning.

Q. I presume you would call that lightning, yes. Mr. Poole, the only thing with this construction is, that it is necessary to keep a distance between the dead arm, or top of the dead arm, and the wire overhead, isn't it? A. No.

Q. What other point is necessary to be considered in building one of these?

A. The arrester is put in there for the protection of the apparatus in the substation; and  
632 the more directly and closely it can be connected to the wires entering the building, the more protection it affords.

WITNESS.—(Continuing.) If both the live and dead side of this lightning-arrester had been placed four feet higher, right where it was, it would have brought the horns up so close to the wires above, three would have been danger of short circuiting, between the adjacent wires. The theory of the arrester is that the arc will travel naturally by  
633 the heated air, and so forth, fly up, and blow out near the tops of the horns; if they are not a certain distance below them. The arc will blow



(Testimony of Charles O. Poole.)

up into the wires, and possibly the wind might hook them across to adjacent wires, which would represent what we call a short circuit on the system, and might cause a great deal of damage to the apparatus in or out of the station. That could be avoided to some extent by the high tension wires above [418] being put farther apart. There is danger of the arc forming or getting between the high wire and  
634 the dead arm right below it. That is not the only thing that has to be avoided. The other must be avoided too. If the switch post had been ten feet higher, this lightning-arrester could not have been put ten feet higher. The other connection must be taken into consideration as well as the dead side of the arrester. I mean that would be too close to the other wire. If the wires were put farther apart it would help it some. Any one coming in contact with one of these live wires on the live side of this lightning-arrester would always be in danger just  
635 the same as they would with the wires on the poles. It would depend on how close he came to it whether he would be in danger. The ordinary distance that he could come to it would be between one and two inches. The voltage impressed there, would naturally jump through air to a good conductor; a man, though, could come closer than that; I should say come within an inch of it. If he were covered with perspiration, I don't think that would make any material difference. If the skin is  
636 wet, it removes that resistance to some extent, it varies. If there was enough lightning to

(Testimony of Charles O. Poole.)

jump across four and a quarter inches, a man would have to be closer than that distance when he would get that charge instead of it going across the gap. I should say that he would have to be an inch closer. If he were within three and a quarter inches from it, he might get the shock then. The skin has the same resistance to sixty thousand volts that it has to ten volts. The higher voltage cuts it down and goes through it where a smaller current would not.

637 I gave directions to put the arresters in at Fairview and Wonder. I did not specify the height of them; I didn't know the exact conditions at that time. I didn't furnish any plans for these lightning-arresters. [419]

Redirect Examination by Mr. CANNON.

It is quite common for linemen to construct other lines on the same poles with high-tension wires of varying distance, from eight feet to four feet, and even as close as three feet, carrying additional wires on underneath the high-tension lines, and it is quite common practice for them  
638 to work at that distance away from these high-tension wires. It is common practice for linemen to do that work. It is common practice for linemen to handle live wires. It is common practice to handle live wires, twenty-two hundred and sixty-six hundred, which are common voltages; I have seen linemen handle fifteen thousand volts. The Pacific Gas and Electric Company is a large institution. It has a great many counties in the State of California which it serves. There is one angle



(Testimony of Charles O. Poole.)

here, between this high-tension wire and the live  
wire, coming down on the lightning-arrester,  
639 in the event of lightning coming it has the ob-  
jection of any sharp angle, but it could not  
very well be avoided in this case. I have met Mr.  
Sheaff. I met him recently over in Mono County;  
before that I met him at Bodie and Hawthorne, and  
before that I met him in Inyo County. I met him  
before the accident. I knew him in 1907 or 1908, I  
think. I met him on Bishop Creek where he was  
working for me, or for the Company. At that  
640 time he was working under me as an engineer,  
on a stationary engine, a donkey engine; he  
was working on dam construction at that time. My  
recollection is that he helped to put up an electric  
generator and stationary engine. I was there and  
know that of my own knowledge. I was there at  
the time.

Recross-examination by Mr. GEDNEY.

I spoke of the linemen working upon poles within  
four feet of high-tension wires, and I consider that  
a safe distance. Four feet away from a man is a  
safe distance for high tension wires. If four feet  
on a pole is a safe distance, I think [420]  
641 four feet on the ground would be an equiva-  
lent; but the reason—the principal reason—  
for putting wires that far away, is so that one wire  
will not come in contact with another; to give them  
sufficient clearance in wind storms, and things of that  
kind. I think the last time I shook hands with him

(Testimony of Charles O. Poole.)

was in Hawthorne; the last time I saw him before this accident. I heard good reports from him occasionally from our workmen that he was working under, from our foreman, and so forth.

**[Testimony of W. V. Pittman, for Defendant.]**

642 Mr. W. V. PITTMAN, produced as a witness on behalf of the Defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. CANNON.

I am an electrician. I know the plaintiff in this action. I met him in Wonder, Nevada, the day before the accident, at 10:45 that night. I introduced myself. I went over there to take charge of the substation at Wonder. When I saw Mr. Sheaff, I was looking for Mr. Halpenny. The boys told me to look for the biggest man in town, and that would be Mr.

Sheaff; and I looked around the crowd at the  
643 postoffice, and I saw what I thought was the largest man there, and the tallest man, and I picked on him, and it happened to be Mr. Sheaff. I met him about eight days after that at Fallon, Nevada. I went from Wonder to Fallon. I was sick and looking for a doctor, and I got hold of the same Doctor that was attending Mr. Sheaff, and he says, "Come along, I am going to attend Mr. Sheaff."

I went down with the Doctor and was in the same room with Mr. Sheaff. In that interview I  
644 had a conversation with Mr. Sheaff about his accident. I asked him in regard to the accident; I says, "My God, Bill, didn't you know there



(Testimony of W. V. Pittman.)

was enough stuff there to kill a regiment? How did you get into that stuff?" and he says, "I must have forgot." When I had that conversation with him, I think I was standing up; I laid down when I [421] first went into the room—I know I was standing up. I remained in the room a short time.

Cross-examination by Mr. GEDNEY.

I had just met him once that night at Wonder, and the next time I saw him I addressed  
645 his as "Bill." It is customary amongst line-men to call them by abbreviation or nickname—Bill, or whatever it happens to be; I have met men and been called "Slats," that is my nickname; I have met them only once, and been introduced by my proper name. I have heard him called Bill at various places. I have heard him called Bill Sheaff, who was the tallest man in town. I don't know what his initials are. I was working for the Pacific Power  
Company. I have been working, the particular  
646 name is Jordan or Mono Lake, at the power-house near Mono Lake.

[Testimony of Dr. Sidney K. Morrison, for Defendant.]

Dr. SIDNEY K. MORRISON, produced as a witness on behalf of defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. CANNON.

I am a physician and surgeon authorized to practice my profession in this State. I have been a physician and surgeon since April, 1902. I am a graduate of Cooper Medical College, San Francisco. My

(Testimony of Dr. Sidney K. Morrison.)

office is now located in Reno, Nevada. I am one of the members of the State Board of Medical Examiners. I have been County Physician of  
647 Washoe County for eight years. That duty requires me to attend to patients in the county hospitals. I am surgeon for the N. C. O. Railroad; assistant surgeon for the S. P. Railroad Company. I have been with the S. P. four years, I think; and the N. C. O. for five or six years. I have had occasion during the course of my practice, covering the last eleven years or so, to perform many operations. I took a month's graduate course in Boston, Massachusetts, at the Harvard Medical School, in 1906; and since [422] then I have spent considerable  
648 time, say a week at a time, averaging twice a year, in San Francisco, at the Lane Hospital; and of course keeping up my journal work and periodicals. I have met Mr. Sheaff, the plaintiff in this action. I met him a week ago Sunday in Reno. I, at that time, made a physical examination of him with respect to his injuries. I was also in the courtroom when Doctor Gardner was testifying, and when the plaintiff himself was testifying, when his injuries were open to view. I made no examination with respect to the scars and evidences of  
649 burns around his shoulders and back, except inspection as to the size and palpation, to see if they were adhered to any deeper structures. I found that the motion was not limited by these scars, and they did not seem to be adhered to the deeper structures. A deep scar will adhere, as a rule, if



(Testimony of Dr. Sidney K. Morrison.)

there is any destruction of tissue. I did not find any adherence there at all to the deeper structure. I at that time examined his feet. I am acquainted with the practice in surgery known as tendon-splicing. I

am acquainted with literature on the subject,  
650 and have had some experience. The first his-

tory of tendon-splicing started in 1880, by an Italian; but has been practiced since 1902 successfully by Doctors Mayo and Murphy, and by an English surgeon, I have forgotten his name; and to my knowledge by Doctor—at the Children's Hospital in San Francisco—Doctor Sherman he has been doing considerable tendon-splicing. That is recognized surgery. It is a proper method of surgery and followed by success. If you wish to splice the tendon Achilles, as represented in your diagram, these

two diagrams that still remain on the board,  
651 are the best means adopted. I examined the

tendon Achilles on the right foot of the plaintiff here for the purpose of determining whether or not a successful surgical operation could be performed on that tendon. My opinion is it [423]

is a very simple matter to lengthen the tendon,—a very simple operation. If that was all there was to it; if you lengthen it by this method, you would want to begin using motion right away; they used to keep

them in casts for six months, but the surgeons  
652 nowadays keep them in not longer than a week, and being forced motion even after a week.

To have a tendon of that kind lengthened, and for it to grow together and be usable will take some time;

(Testimony of Dr. Sidney K. Morrison.)

but you would sew these ends together with unabsorbable silk, and of course the silk takes the pressure away from the ends that are healing, and you go on with your motion while the tendon is healing.

Mr. CANNON.—Q. With respect to these rough ends or corners that appear where the splicing took place (referring to diagram on board), what, if anything, does nature do with regard to these?

653 A. Nature takes care of those absolutely.

WITNESS.—(Continuing.) I should think the tendon so spliced would become as strong as the other one. The records show that it gives a perfect functional result. By “perfect functional result,” I mean it does the service just as good as if it had never been damaged, or never been cut; the function that it serves is perfect. I think this operation could be successfully performed upon the foot of the plaintiff in this action. If it is the tendon Achilles that is holding the heel up, why, lengthening it

654 is going to let the heel right down. I know of the surgical operation on interference called skin-grafting, and the placing of tissue from one part of the body to another. That is recognized surgery. It is practiced successfully. As to what could be done with that foot, and how it could be done,—the first thing, I would examine him under an anaesthetic; of course the examination I made was a rebellious witness, in a way, you know; he complained of [424] pain when you would almost look at him. I would put him under an an-  
655 aesthetic, and find out what is binding the foot in this position. He has what we call a



(Testimony of Dr. Sidney K. Morrison.)

talipes equinas varus, with the foot in this position. Now the thing to do is to find out what is holding it there, and relieve the constriction. If it is the tendon Achilles, if you want to, you can simply cut it off within the sheath, and let it grow together—we do that with children all the time. It will grow together without splicing. We cut these tendons, and place the foot in an unconstricted position; we do

that on children all the time. Those are the  
656 muscles on the inside; that pass down through in the flexor tendons; then get your foot in the proper position, and over-correct it, and put it at rest. If this foot is drawn in this way (illustrating on foot of plaintiff), you would want to put it up, in the position of over-correction. The next step would be that when this constriction is relieved, and the tendon heals, the foot will be in normal condition; not paying any attention to these tendons, because nature takes care of an awful lot of damage, and an awful lot of destruction, and what not.

657 Then with his foot down normally, and with the appliances that you could remove, I would use massage, and work on the foot. Another thing, if that scar across the bottom of the foot is so deep and so firm as it appears to be, that it is drawing the foot right up in a knot, and these bones simply come together, you would have to dissect the scar out carefully, and transplant a thick flat from some other part of his body into that place. The best thing

(Testimony of Dr. Sidney K. Morrison.)

to do is to take a sound limb—for instance,  
658 he has a good limb here (illustrating on person  
of plaintiff); while it is still attached to the  
leg, stitch it here, and let him hold that there for a  
week, with strips of plaster of paris, and then you  
can cut it off this way (illustrating); and then she  
is growing here—but of [425] course you have  
got to be free from infection. You have to have ab-  
solute sterility, and the best hospital accommoda-  
tions you can get, one that you can depend upon.  
That kind of surgery should be done by a man that  
is doing that kind of work; by a specialist,  
659 an orthopedic surgeon, or plastic surgeon, do-  
ing it in the hospital where he is in the habit  
of working. The tendons holding the toes and run-  
ning on up are called the flexor tendons.

Mr. CANNON.—Q. Those are the same tendons  
that Doctor Gardner the other day called the ex-  
tensor tendons?

A. He just got them twisted.

Q. When they are ruptured, what is the process?

A. Well, if you have a gap that you want to bridge  
over, if you have healthy tissue to bridge through,  
you can do that. For instance, it has been  
660 experimented by Doctor Mayo doing some  
work along that line; they use dogs for it;  
take four inches of the tendon Achilles out of the  
dog, and run threads of silk from one end to the  
other, and close it up; and in six months to a year's  
time, that tendon which has grown in where that  
string was has been examined, and you would not



(Testimony of Dr. Sidney K. Morrison.)

be able to tell the difference between that and real tendon tissues. Of course, this is all work for specialists, and it is something I would not attempt, but I am just telling what literature says  
661 about this tendon work. They are certainly doing wonderful things in this tendon work. The thing to me in that foot is to get it straightened out; relieve this tension which causes his pain; get that foot straightened out, and then see what you can do with it.

Q. In this talipes equinas you speak of, Doctor, what means should be adopted to avoid that, in the case of acquired talipes equinas, by the physician attending a patient, if it either comes from paralysis or from an injury, or what not, as [426] a  
662 physician observes it; what is the proper course of treatment to avoid it and correct it?

A. Well, if you have a large destructive wound, that is, a wound that has destroyed all this planter tissue, and knowing these things are gone, if you are unable to keep that foot from contracting up into a shape like this, you might as well cut it off in the first place, and save this man the suffering, because this is an absolutely valueless foot the way it is; and if you cannot promise your patient any re-  
663 lief from it, what is the use of waiting? If you can, clear up this sloughing mass—it is a terrible condition to treat, and I clear them up with—I digest that stuff out with pepsin and pancreatin; it is stuff we have in the stomach and intestines; and I use lots of this pepsin and pancreatin,

(Testimony of Dr. Sidney K. Morrison.)

and it digests the dead tissue and does not hurt the living; it digests this dead tissue, and relieves the living; and then you can clean it up, and after cleaning it up, see what destruction you have had, and keep your tendons clean from scar; if you  
664 don't, it is going to twist up in a knot.

WITNESS.—(Continuing.) You can dissect those tendons up—it is hard. It would not be possible to do anything with the tendons while the sloughing process was going on. You could not touch them. After the sloughing process is completed and healthy granulations appear, the granulated tissue would be so soft, you could over-correct your foot, even while the scar tissue was forming; and if you can, get a healthy flap to interpose on top of these healthy granulations, to prevent the skin  
665      facia contraction. I would not bother with tendons in that case. In this case he has got the flexed toes; and if this muscle here was badly injured, or caught in the scar, that would draw up; the first thing it would do, would be to draw those toes up into a hammer toe, like he has on the opposite [427] foot. Now his toes are straight, and yet the toes from here down (illustrating on foot of plaintiff) are contracted, because it is painful for him to move the foot, and he has drawn it up; that could be relieved by getting the foot down  
666      flat. In my opinion, the foot can be greatly relieved, and get a good serviceable foot, if the work was done properly, under favorable conditions. Talipes equinas can ordinarily be prevented



(Testimony of Dr. Sidney K. Morrison.)

as it is coming on, by such proper surgical treatment as I have suggested. If you notice this tendon of Achilles is pulling the foot back, why relieve it. That would help to prevent the formation of this talipes equinas; you would have to prevent this scar tissue from contracting, and this tendon Achilles from drawing up. In cases of congenital club feet, surgery can cure that; but they don't bother  
667 with splicing them; they simply cut the tendon under an anaesthetic, bind the foot in this position (illustrating), and put it in a plaster cast, with the over-corrected position. Nature fills those cut tendons out, heals them up itself. Those tendons are perfectly good afterwards. I examined the left foot; he has got hammer toes—the knuckles bent up. There not being any scars on the bottom of that foot to draw down the facia and the tendons, it must be caused by injury to the toes from some direct heat or fire, or what not, at the sides  
668 of the toes, drawing them up. The scar was on the anterior surface of the left foot, as I remember. There was nothing in the scars or contraction in the foot to show the reason for the pulling up of that foot; that must be in the toe itself.

Mr. CANNON.—Q. State, Doctor, what other surgical process can be used at times and under certain proper conditions, to transplant, so to speak, tendon from one part of a leg or ankle, into another; or to take one tendon, or part of it, which is performing one office, and transfer it to another  
669 [428] part of a foot, to perform another office.

(Testimony of Dr. Sidney K. Morrison.)

A. It has been brought into vogue on account of this infantile paralysis, where a certain set of muscles becomes paralyzed. If you had, for instance, the extensor muscles on the leg paralyzed, then the flexor muscles would overact, and give you just exactly what that man has got, talipes equinas varus. Here you are treating with dead muscles on this side (showing) and live muscles on this side; if they take a tendon from one of these live muscles, pass it across the leg there, and attach it to  
670 the tendon of one of the dead muscles, or all of them, when healed, you get this muscle doing this muscle's work.

Q. How does that operate?

A. It has been very successful, under expert hands, of course. Those are operations done by experts.

Q. Now, Doctor, take the case of the plaintiff in this action, as you have observed his present condition, and in connection with the testimony which you heard given by Doctor Gardner as to his injuries and the course of his treatment, and the course of his convalescence, so to speak; state whether  
671 or not in your opinion that foot could have been brought about so as to make it a good workable foot; I don't mean perfect, like it was before, but so as to make it useable.

A. It is my opinion it can be made into a useful foot.

Q. In other words, by using the processes you have described in the treatment, and in the sloughing, and



(Testimony of Dr. Sidney K. Morrison.)

in looking out for the tendons, and in keeping the tendons from coming in with the scar tissue, and keeping the scar tissue from getting hold of the foot, and pulling it out of shape; what, in your opinion, if  
672 all those things had been done at that time, would be the present condition of the foot?

A. Well, that is pretty hard to tell. The doctor may [429] have been up against difficulties which we cannot foresee; of course we know that he had a terrific sloughing dead wound, and there is no question but what he had a lot of trouble cleaning it up; but it seems to me if I had noticed six weeks after the injury, with a big hole like that worn in the foot, that the tendon Achilles was pulling up, I would have tried to keep that foot straight. It is  
673 a cinch if that scar tissue is allowed to form in there, you are going to have just a knot for a foot.

Q. Taking the condition of the plaintiff's foot as you have observed it yourself, in connection with the testimony you heard given by Doctor Gardner as to the character of the injuries and the course of treatment, and all about it in that connection, state what, in your opinion, would be the effect of proper surgical interference at this time.

A. Oh, he could get relief, and I think a  
674 fairly serviceable foot, and possibly better than that; but of course we have to guard ourselves in these prognoses; he ought to have a fairly serviceable foot, properly treated.

(Testimony of Dr. Sidney K. Morrison.)

Cross-examination by Mr. GEDNEY.

If Mr. Sheaff came to me now and told me to do the best thing I could with that foot, I would examine it under an anaesthetic, and find the tension, and try to get that foot in a normal position. I would cut the scar tissue in multiple places, if I had to cut the tendons out—I would try to get  
 675 that foot down; it is no good to him up there, is it? After I looked at it about two minutes, I don't think I would say, "I will cut that foot off." I would not take the foot off. The way he is now he is permanently injured. You certainly cannot give him a foot as good as it was before; that is absolutely impossible. I have not done these things I know they can be done, only from what I read. We depend on that [430] from the men that write on the subjects. I am giving my opinion on what  
 676 other people have said might be done and applying it to this case. That is the only way we doctors learn. I felt of that foot, it is cold.

Mr. GEDNEY.—Q. How are you going to graft blood vessels in that?

A. We are not going to graft blood vessels.

Q. How are you going to get that foot better then?

A. We have two sets of arteries, one posterior tibial, coming along the scar, passing along the bottom of the foot, and spreading out; whether that is injured or not, I don't know. We have the  
 677 anterior tibial, coming from the same artery, that comes down, ending in the front of the foot, and makes what we call an arch; and the lower



(Testimony of Dr. Sidney K. Morrison.)

one comes along and makes an arch; and these both send in vessels to one another, what we call anastomosis. We very often ligate this artery, or this one—for instance, take a big cut, where you could not control the bleeding, and were not afraid of our foot sloughing off; nature has so many ways of interlocking its vessels. That takes time, and you would have a cold foot for a while. Another thing you  
678 have here, you have scar tissue which has contracted down, until it has contracted all the vessels out of it, and probably all the nerves, so you have only scar tissue, and always do have it.

WITNESS.—(Continuing.) Nature could not do any more than heal up this hole; that is all. Of course, the blood vessels of the area scarred over are injured. There cannot be any blood vessels there.

Mr. GEDNEY.—Q. In order to put that foot back in a normal position, you would have to put in blood vessels, wouldn't you? A. They grow. [431]

(Witness continuing.) If you put healthy  
679 flesh in there, they would grow. It is possible to do that. You can put flesh in there—a flap—easy enough. That is, you cannot depend on skin grafts in a hole like that; or pieces around this leg put in there; but you could, for instance, take this healthy leg here, and cut up, say a flap that long (illustrating); where you have taken it up, bring it together, because it is loose skin, and you can cover a gap that wide (illustrating); leave that still attached, so this flap is getting its  
680 blood from this leg, then you can sew this up, and sew it to the bottom of that foot,—

(Testimony of Dr. Sidney K. Morrison.)

sew the foot on there, or sew the flap on the foot. I have done things of that kind. If you don't get any infection, it will be successful. You have to be awfully careful of infection. I would cut out all scar tissue. The planter fascia is gone on this foot. You can get along without planter fascia. The planter fascia is a sinew from the heel to the toes. The planter fascia is not what holds  
681 that foot up there. Every bone has tendon fascia around it, each bone, that is stronger than the bone, the bone will go before that will; the planter fascia is just a thin sheet, just the same as we have in the palm, that radiates and goes out the different fingers, and it is what will get injured with a carpenter or a miner in using a hammer; in that case we have what we call a hammer finger—just draws it up. There are not any hammer fingers or  
682 toes there. That doesn't show that all those tendons are gone. If they were gone you would have that scar tissue going right down to your toes. Planter fascia does not hold the arch up. The tendons that join the bones of the foot all around the bone held the arch up. It is pretty hard to think that those tendons are gone, because those joints would all be open; it may be possible they are gone. I could not tell from my examination whether or not the tendons were [432] all burned out up to the bone. In my conclusions as to remedying this  
683 foot, I have not presumed that those tendons were there. I was not going to figure on any work on the sole of the foot with the tendons,



(Testimony of Dr. Sidney K. Morrison.)

except to free them, if there were any constrictions or adhesions to scar tissue; by taking out all the scar tissue you would know whether you had tendons or not—just relieve the foot. If, under an anaesthetic, I found the tendons were all gone, I would not conclude it was a hopeless case. I would try to put that foot in normal position, and see what result we got.

I would not try putting those tendons in.

684 Mr GEDNEY.—Q. If those tendons are all gone on the bottom of the foot, what are you going to do?

A. Well, the best amputation for one that has not lost any flap here—if we can get a flap—is to leave the heel on. Now, supposing you had no tendons from here down (illustrating on foot of plaintiff), and we had a flat foot, he would have just as good an amputation; he would have a heel to walk on, and with some support, if he had his foot all gone.

685 In an amputation of that kind, if you have no foot at all, you can put on an appliance, and you would never know a man had a wooden foot.

Q. If you had a heel?

A. Yes; and I like an amputation of that kind, because you never have to put on the artificial appliance to go to the toilet at night; and you have great inconvenience with artificial limbs.

WITNESS.—(Continuing.) I would not take off this foot up to the instep. You were asking about the tendons, if they were gone would you take the foot off, and I would say no; he has the ex-  
686 tensors, and he has that motion, that walking motion. If he had not the flexors on the

(Testimony of Dr. Sidney K. Morrison.)

bottom he could walk if you [433] have enough scar tissue there to keep it down. If you put any weight on this foot right now, he would simply break down that instep that is drawn up there by that scar tissue, and break that foot open; that is what would happen. I did not examine the witness to find out whether the tendon Achilles was drawn up. The

witness was a rebellious one who complained  
687 of the pain. When I was examining him, I

had him work that joint at the ankle. I did not notice the perspiration stand out on his face while I was doing that. He complained of pain, not when I was examining him, but when the other Doctor examined him he complained of pain then. I will agree with you it is painful. If you remove your scar tissue, you are not going to break that foot open, if you put any weight on it. I would remove

the scar tissue all I could. Then I would put  
688 back in there a piece of the other leg, which is skin and tissue. I would not attempt to put

back the tendons if they are gone. You would then have nothing there but a mere piece of flesh with bones above it. You see the framework is the bone, that holds the foot up there. The bones themselves hold the foot up there; muscles and tendons are simply for motion. If there wasn't anything around the bones at all, the arch would not necessarily break down. You could obviate it in a minute by wearing

a flat sole insole. If your nerves have been  
689 destroyed, you won't have any pain. It is in your own testimony that your foot had no feel-



(Testimony of Dr. Sidney K. Morrison.)

ing. You have no sensation here (showing), only in the heel. I think it will be possible to get away from that pain. That man will suffer less if that contraction is relieved, then he is suffering now with the foot all bound up in a knot. If the tendon Achilles is causing the contraction, one of the heels is pulled above the other.

Mr. GEDNEY.—And if it is the tendon Achilles that is pulling one of the heels above the other, he could stand [434] and straighten his leg  
690 with his toes on the floor, couldn't he?

A. No, this contraction—you see this muscle that goes in the tendon Achilles is connected up here on the femur; that draws his knee up, and the heel, too, so if the tendon Achilles is relieved that knee would straighten out, and let the heel straighten out.

WITNESS.—(Continuing.) Apparently, he has no trouble in straightening his knee out. His knee is all right, as far as I know.

Mr. GEDNEY.—Q. Now if he stands and pulls that heel up, his leg would still be straight?

691 A. This way, you mean (illustrating)?

Q. Yes. You are bending your knee hold it straight.

A. That is a very awkward position (illustrating)—try it.

Q. If this man stands with his both heels—

A. (Intg.) Here is the natural way to stand (illustrates);

Q. But if this man stands with both heels the same

(Testimony of Dr. Sidney K. Morrison.)

length it is not the tendon of Achilles that is drawn up, is it?

A. The heel is the same way. I don't understand.

Q. Suppose you measured both his legs straight out, and the heels came to the same length?

A. You mean this way (illustrating)?

692 Q. Yes, that way.

A. Well, now, the natural position, you see, is this (illustrates); you can put your foot in any position, as long as your knees are straight the tendon of Achilles is not going to shorten.

Q. Try it with one foot straight and the other one that way; you have one heel up past the other one, haven't you? [435]

A. Let's get it straight and see, that is an experiment; (placing feet in position indicated); yes, you bring that heel back; of course; but it would not influence the length of the leg, simply contracting the muscles.

693 Q. Suppose Mr. Sheaff's heels are level here, and this foot is still down, what will it show you?

A. It would not look like the tendon Achilles was pulling that up.

Q. And that is the fact in this case, isn't it?

A. I don't know.

Q. How do you account for one foot being half an inch shorter than the other one in this case.

A. Because it is drawn up in a knot; it is pulled right up in a knot.

WITNESS.—(Continuing.) With nerves gone,



(Testimony of Dr. Sidney K. Morrison.)

planter facia gone, blood vessels gone, and the  
694 tendons gone off of the bottom of that foot, I  
would keep that foot on. This would be done  
under an anaesthetic. If it is tendon work, he would  
be advised to use that leg in a week. With his left  
foot, he has two toes missing, and little work on those  
hammer toes. Those hammer toes can be  
straightened out. They would have to be cut across  
the bottom, that is all.

Mr. GEDNEY.—Q. In this operation, Doctor, ex-  
cluding the consideration of cost, and worry, and  
pain, there is always the danger of blood poisoning,  
isn't there, which ends in death?

695 A. Oh, blood poisoning nowadays is pretty  
rare in surgical work.

Q. Pretty rare? A. Yes.

Q. But there is a possibility of it?

A. You take that chance, I suppose, one in a mil-  
lion, or something like that. [436]

Q. Only one in a million?

A. Oh, in cases where you are working with this  
condition you won't get any poison that is going to  
run up the leg; you might get infection, that is the  
worst you would get, apparently.

Q. Doctor Gardner or any other doctor,  
696 could not have done that while the healing  
process was going on there?

A. All he could do was to try to prevent contrac-  
tion.

Q. It would have been too risky to try to do any-  
thing with the tendon Achilles or anything else at

(Testimony of Dr. Sidney K. Morrison.)

that time, on account of infection?

A. The tendon of Achilles could have been lengthened or cut by what we call a subcuticular incision, without any danger of infection; that was done before antisepsis was known.

Q. Well, considering that right here is a sloughing mass, would you cut in within an inch or an inch and a half, in this tendon of Achilles, while  
697 this sloughing mass was going on?

A. Of course, it would not be wise to do it if you had your sloughing mass active; if you hadn't cleaned it up. I don't know what means that Doctor used in cleaning this sloughing up; it is usually done by digesting it, or by using picric acid, you get pretty close to the infected area, if you are careful; in this operation of cutting a tendon, one incision is made with a tenotomy, or a little pointed knife, just large enough to get into this hole, and saw  
off your tendon, pull it out from the same hole,  
698 and plug it up.

WITNESS.—(Continuing.) I think after that sloughing mass was cleaned up, it should have been done if that tendon is the thing that is doing the damage. After three months when this was cleaned up is a good time to do it. [437]

Redirect Examination by Mr. CANNON.

I think so far as I can tell from my examination, the bony structure of that foot is all right except contracted up. I would not leave that foot as it is. It  
is no good to him now. I would not give up  
699 that case as hopeless.



(Testimony of Dr. Sidney K. Morrison.)

Recross-examination by Mr. GEDNEY.

Mr. GEDNEY.—Q. If you had plenty of money to work on him with?

A. No, if he would go to the County Hospital I would work on him.

**[Testimony of W. N. Chatfield, for Defendant.]**

Mr. W. N. CHATFIELD, a witness produced on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination by Mr. CANNON.

I am Assistant Secretary-Treasurer of the Pacific Power Company. I met Mr. Sheaff, the plaintiff in this action, at Fallon, September eighteenth, 1911.

The head office of the Pacific Power Company  
700 is at Bodie, near the Nevada line, in California. The Pacific Power Company lines go through Bodie, and furnish very little power, and Aurora the same. Bodie is furnished only for a few lights, and the same at Aurora; and Lucky Boy is furnished a few lights, and a little power; and over at the other end of the line from Lucky Boy there was no power furnished until it got to Fairview, which furnished the Mining Company only; and then furnished the Mining Company only, at Wonder. There were no cities or towns along that  
701 route that they furnished. What they furnished would depend on those mines working entirely. The power plant of the five is located in what is called Jordan, near Mono Lake. They have two fifteen hundred K. W. Allis-Chalmers generators. That is the total capacity of the plant. I

(Testimony of W. N. Chatfield.)

called upon Mr. Sheaff September eighteenth, at the Grand Hotel at Fallon. [438] I went to his room. I had a conversation with him at that time. We talked regarding the accident, and how he had been injured, and I asked him how he supposed he  
702 got it, and as near as I can remember—and I tried to remember this one thing especially—he said, “Of course I don’t know, but I suppose I wanted something in the substation, and without thinking, walked into the hot side,” or into the “hot wire.” That is in substance what he said to me about how the accident happened. When I went over there I found out that he claimed that he had no money, and he seemed to be much worried about his finances, and so I asked him about arrangements that he could make with the company. At the power-house at Jordan, I kept a daily record,  
703 taking the readings from the various meters. Those readings were taken every thirty minutes. I have, at your request, and at the request of counsel on the other side, those readings from Bodie since this trial has gone on. I believe I got those readings last night. I telephoned the night that counsel requested them, but they were out at the power plant, which is quite a ways from Bodie, and there was no means of communicating on Sunday, which was the next day, so it came in Monday, and was mailed Tuesday, and it takes two days to  
704 get up here, two or three days, I think it was, in that case.

Mr. CANNON.—Q. This is the record of the



(Testimony of W. N. Chatfield.)

Pacific Power Company, and the readings for the twenty-four hours ending eight A. M. Wednesday, July 18th, 1911?

Q. That would take from eight o'clock of the morning of the 18th? A. It would.

Q. That would take from eight o'clock of the morning of the 18th?

Q. Do you know these signatures to this sheet? (Showing to witness.) A. I do. [439]

Q. Whose signatures are they?

705 A. The signatures of the operators on shift at the various times during the day.

Q. Does this also state the weather conditions on that day? A. It does.

(Paper handed to counsel for plaintiff for examination.)

Q. What does this "bus bar" mean?

A. The bus bar voltage.

Q. Now will you take this sheet, Mr. Chatfield, and give us from eight o'clock A. M. down to noon, and that day will be enough, probably, the half hour readings of the voltage for that day?

A. The readings of bus bar voltage are 105,  
706 all through the day, each half hour, until one-thirty, or until two o'clock.

Q. At any of those half hour readings does the sheet show there was any variation in the voltage?

A. There is none.

Q. Now look at the remarks on the opposite side, at ten-forty what memorandum do you find there?

A. Under "Remarks" covering the general opera-

(Testimony of W. N. Chatfield.)

tions for the day: "10:48 A. short on high line station down, 10:52, machine up on line, tested O. K., station normal. Trouble caused by man at Wonder getting into juice on arrester."

707 Q. Then at 10:48, the short mentioned there as occurring at 10:48, in connection with the man getting in the juice of the arrester at Wonder, is the only variation shown on the entire sheet, is it?

A. That is the only thing out of a perfectly normal day; no shut-down, or anything.

Q. What does it show about weather conditions on that day? A. Weather clear.

Q. By the way, this 105 that you read, in order to [440] get the true high voltage would require a calculation?

A. Yes, the ratio of the various transformers, where it is transmitted.

708 Q. Then all that could be told so far as the voltage is concerned, from this paper, is that it did not vary; that it was at the same standard all day long? A. Yes.

Cross-examination by Mr. CURLER.

That does not mean there was only 105 volts pressure on the line. I don't know just the exact ratio of the transformers; it was practically the regular voltage, fifty-five thousand. I did not go to see Mr. Sheaff when I first arrived in Fallon. I think I first arrived in Fallon approximately around seven  
709 o'clock in the morning. I was around there with Mr. Sheaff until about half past eleven, and then I was there about from probably one-thirty



(Testimony of W. N. Chatfield.)

to three-thirty. I don't know whether it was eight o'clock, probably nine o'clock, somewhere about that time. At half past eleven, I went away to my lunch, and walked around the town for a while to see the town, and after that walked back to Mr. Sheaff's room and stayed there until within half an hour of train time. I believe the train went out somewhere

around four o'clock. At that time I had a  
710 conversation with Mr. Sheaff respecting how he was hurt. I believe that conversation took place in the morning. It might have been about thirty minutes, or it might have been one hour and thirty minutes after I was with Mr. Sheaff when that conversation took place. I talked with Mr. Sheaff about a great many various subjects. He knew some people I knew and he talked to me about them—the Farringtons. He talked about being out there, and about the one they call “Old Arch” Farrington, and he called him “Uncle Arch,” and what a fine  
old man he was, and talked about the boys out  
711 there. [441] I asked him how he supposed he ever got hurt, and then he replied substantially as I answered in the direct.

Mr. CURLER.—Q. I understood you to say that you thought he replied.

A. Those were the words, as near as my memory can go.

Q. Now are you sure, Mr. Chatfield, that he said that he did not know?

A. He said, as near as I can remember, I don't know.

(Testimony of W. N. Chatfield.)

Q. He said he didn't know how he got hurt?

A. That is as near as I can remember, that  
712 those were his words.

Q. Are you sure that he said that he was going to the substation for something?

A. He said that he was going to the substation or the other side of the arrester; that is, as I remember, he said he was going to the substation.

Q. You say now that he either said he was going to the substation, or along the side of the arrester, which was it?

Q. It was that he was going—he said going toward the substation; either said “going to the substation” or “going toward the substation.”

713 Q. Then he didn't say that he was going to the substation for something, is that right?

A. He was going toward the substation for something, or going to the substation for something.

Q. Well then, was the whole of the conversation, “I must have been going to,” or “toward the substation for something”; was that the whole of it.

A. No, it was not.

Q. Well then, what did he say next? [442]

A. “And without thinking walked into the hot side” or “hot fire,” whichever it was.

Q. Did he say “and without thinking I walked into the hot side”?

714 A. As I said at first either “hot side” or “hot wire,” it is the same thing.

WITNESS.—(Continuing.) I would not swear whether he said “hot side” or “hot wire.” That



(Testimony of W. N. Chatfield.)

was before I gave him a fifty-dollar check. I gave him a fifty-dollar check, I think in the afternoon. I also took Mr. Sheaff some cigars and some grapes. I believe I had the cigars with me when I went there. I am pretty sure I did; I got them at the slot machine the night before. In the afternoon I brought him some grapes, I think when I came from lunch;

715 I think that was the time when I came from lunch, I am not exactly positive. I came all the way from Bodie just to see Mr. Sheaff and to see how he was getting along. It was not my purpose when I first went there to try and get a compromise with him; I went over to see him, to see how conditions were. When I went over there, I didn't know exactly just what I would do. I intended if the circumstances warranted it, to get a compromise  
716 if I could. That was one of my purposes in going over to see him, and see the general conditions. It was not my main purpose. My main purpose was to see that he was not suffering from lack of anything that was needed in his condition.

Redirect examination by Mr. CANNON.

Other things that were in my mind were to see if he were receiving proper care and attention. He seemed at that time to be satisfied with his treatment. I don't believe I made any suggestions to him at that time respecting his treatment. I gave him  
717 the money some time in the afternoon. He gave me a receipt for that money, but aside from the mere receipt he gave [443] me nothing. I had a subsequent conversation with Mr. Sheaff a

(Testimony of W. N. Chatfield.)

couple of weeks after that in Fallon. I at that time had a conversation with him in respect to his care. I talked with him regarding the advisability of going to San Francisco or Los Angeles, where he could receive better medical attention. I offered that we would take him down to the city, put him in any good hospital, where he could receive proper medical  
718 cal attention. He said he was perfectly satisfied where he was.

Recross-examination by Mr. CURLER.

Nothing was said at that time about a release. That was October 3d, 1911. I am very positive of that. I made a subsequent visit to him January 12th, 1912.

Defendant thereupon rested.

**[Testimony of Mrs. V. L. Adams, for Plaintiff.]**

Mrs. V. L. ADAMS, produced as a witness on behalf of plaintiff in rebuttal, being first duly sworn, testified as follows:

Direct Examination by Mr. GEDNEY.

At the present time I reside in Reno. In July, 1911, I was residing in Wonder, Nevada. My  
719 husband and I were engaged in the hotel business in Wonder at that time. I was acquainted with Mr. Sheaff at that time. We were acquainted with Mr. Halpenny at that time. Mr. Sheaff and Mr. Halpenny were staying at our hotel at that time. At that time we had a young lady employed who was waiting on table. I had a conversation with Mr. Halpenny on the morning of the



(Testimony of Mrs. V. L. Adams.)

18th of July, 1911. Mr. Sheaff was not present; he left earlier in the morning for Fairview. This conversation was between half-past five and  
720 half-past eight o'clock. It took place in our dining-room. Those present were the waitress, myself and Mr. Halpenny, and there was others, but I don't remember just who they were. At that conversation Mr. Halpenny asked if Mr. Sheaff had gone. Either I or the waitress replied that he had gone. [444]

Mr. GEDNEY.—Q. And did Mr. Halpenny then remark, "I should have gone to Fairview myself instead of sending Mr. Sheaff." A. Yes, sir.

Mr. CANNON.—We object on the ground it is incompetent, irrelevant and immaterial, and it does not in any manner tend to contradict the witness  
721 Halpenny.

The COURT.—The objection will be overruled.

Mr. CANNON.—We note an exception.

The action of the Court in overruling said objection and permitting said question to be asked and answered is here assigned as

**Error No. 45.**

Mr. GEDNEY.—Q. And did Mr. Halpenny then say, "Well, Bill is not an experienced electrician, and I am afraid he is not capable of doing that work?" A. Yes, sir.

Mr. CANNON.—One moment, I object to the question on the ground no foundation has been laid for it, and it is incompetent, irrelevant and immaterial, and

(Testimony of Mrs. V. L. Adams.)

722 does not in any manner contradict the testimony of the witness.

The COURT.—Is there any question about that being the language?

Mr. CANNON.—It does not seem to me exactly like the language; there was something about an electrician; however, I don't care to look it up. I will withdraw the objection, excepting that it does not tend in any manner to contradict the testimony of the witness. As to the foundation, I will withdraw the objection.

The COURT.—Or the form of the question?

Mr. CANNON.—Yes.

The COURT.—Then the objection will be overruled.

Mr. CANNON.—We note an exception. [445]

723 The action of the Court in overruling said objection and allowing said question to be asked and answered is here assigned as

**Error No. 46.**

[Testimony of V. L. Adams, for Plaintiff (in Rebuttal).]

Mr. V. L. ADAMS, produced as a witness on behalf of plaintiff in rebuttal, being first duly sworn, testified as follows:

Direct Examination by Mr. GEDNEY.

In July, 1911, I was residing in Wonder, Nevada. I was a hotel-keeper there. I know Mr. Sheaff and Mr. Halpenny who were at that time staying at my



(Testimony of V. L. Adams.)

hotel. On the 18th day of July, 1911, I had  
724 a conversation with Mr. Halpenny concerning  
the injury which Mr. Sheaff had received that  
day. The conversation took place in our wash-room.  
I can't tell you the exact time, nor at about what  
time, but it was when Mr. Halpenny came down from  
the substation, and was cleaning up—washing.

Mr. GEDNEY.—Q. Now, at that time and place  
did Mr. Halpenny make the remark that he was  
very sorry, or sorry that Mr. Sheaff was hurt?

Mr. CANNON.—We object to that on the ground  
that it would not in any manner attempt to contra-  
dict the witness Halpenny, because he did not  
725 deny, and could not say one way or the other,  
whether he made such statements.

The COURT.—I think that is true.

Mr. GEDNEY.—I prefer before that objection is  
made, to put in the last question, and then have the  
matter passed on.

Q. At that time and place, did Mr. Halpenny say  
he was sorry Mr. Sheaff was hurt, and then say, “I  
felt this morning I should not have sent him over  
there?”

Mr. CANNON.—That is objected to on the ground  
it is incompetent, irrelevant and immaterial, and  
does not in any manner attempt to contradict  
726 the witness, the witness not having any recol-  
lection upon that subject at all, and simply a  
[446] matter of an expression of solicitude and re-  
gard.

The COURT.—Do you make any objection to the

(Testimony of V. L. Adams.)

language of the question as propounded to this witness, as to whether it is the precise question which was propounded to Mr. Halpenny?

Mr. CANNON.—It sounds like it, but I am not in a position to say whether the language is the same or not. I have not placed any objection on that ground.

The COURT.—You do not make any objection on that score?

Mr. CANNON.—No.

(Argument.)

The COURT.—It seems to me the only purpose for which this can be admitted is that it may be in conflict with statements made by the witness Halpenny on the stand. It seems to me that it is, and on that alone it is admitted. The objection will be overruled to that extent, and you may have an exception.

The action of the Court in overruling said objection and allowing said question to be asked and answered is here assigned as

**Error No. 47.**

The WITNESS.—Yes, sir.

728 Mr. CANNON.—If the Court please, we have prepared the amendment to the answer, that was allowed the other day, and we would ask permission at this time to attach it to the answer as a separate defense.

Mr. CURLER.—If your Honor please, in connection with that there is an objection we wish to interpose, and get the understanding of the Court



(Testimony of V. L. Adams.)

upon this amendment. We understood at the time that the offer was to amend the first affirmative defense of the answer by changing the words "caused by" [447] to the words "proximately contributed to the injury"; and we understood the Court  
729 to say that there was sufficient substance or matter in the first amended complaint to authorize the amendment to that section. What counsel purposes doing, as I understand it, is to leave the first separate defense, and add a third defense, pleading what they claim is a plea of contributory negligence, and we insist that that was not the understanding at the time, and that it is too late. We insist, if your Honor please, that the amendment should be restricted either to the changing of those words in the first affirmative defense, or that it should be rejected entirely.

(Argument.)

730 The COURT.—I shall allow the amendment.

It has always been the practice in this Court to be very liberal in reference to amendments, and I don't know that any one on the trial of a case has ever lost anything so far, by his defective pleadings, in this Court, if he could amend them, and the Court could exercise its discretion in that way.

Mr. CURLER.—If your Honor please, since that matter has been settled, under that amendment we now ask to amend the fourth paragraph of our complaint by inserting therein an allegation that the defendant knew that the plaintiff was inexperienced in electricity, and failed and neglected to warn or caution the plaintiff at the  
731

(Testimony of V. L. Adams.)

time they sent him to work upon the arrester.

The COURT.—Is there any objection?

Mr. CANNON.—Yes, your Honor, we object to that on the ground it would be setting up an entirely new cause of action, one that we have not been brought into Court upon; one that the defendant has not been served with, and if such an amendment should be allowed at this time, it would necessitate an application for a continuance. We have not tried our case [448] upon that theory. We have not presented our testimony upon that theory.

732 We have presented our testimony upon the theory of the construction of the complaint, and tried our case on such theory. To allow such an amendment would compel us to demur to the complaint for setting up two causes of action in one count, and setting up different causes of action—duplicity in the complaint, because it is under all of the decisions, a separate and distinct cause of action, based upon separate and distinct principles of construction.

(Argument.)

The COURT.—I will allow the amendment.

Mr. CANNON.—We note an exception, your Honor; and we would like to have the precise form of the amendment submitted to us, because  
733 we will want to ask, and ask now, for an opportunity to demur to the complaint as amended, so that the issues may be properly framed before the case goes to the jury.

The action of the Court in overruling said objec-



(Testimony of Dr. G. M. Gardner.)

tion and allowing said amendment is here assigned as

**Error No. 48.**

Mr. CURLER.—We will submit it at the noon recess.

Mr. CANNON.—We will object to proceeding any further in the case with this change, and move at this time for a continuance of the case for a reasonable time, so we may prepare a defense to the  
734 new theory which has been made by this amendment.

The COURT.—How long a continuance do you want?

Mr. CANNON.—I don't know, the whole matter comes up so suddenly; I will have to communicate with my people, I presume. I have objected to going on with the trial, without waiving my right to make a motion for a continuance; I don't want to delay the trial, and when I see the precise wording [449] of the amendment, I can determine definitely whether I want to press my motion for a continuance or not. With that understanding, I am will-  
735 ing, I am willing to go ahead.

The COURT.—Very well.

**[Testimony of Dr. G. M. Gardner, for Plaintiff (in Rebuttal).]**

Doctor G. M. GARDNER, produced as a witness on behalf of Plaintiff in rebuttal, having been previously sworn, testified as follows:

Direct Examination by Mr. GEDNEY.

The planter facia in that foot is entirely gone;

(Testimony of Dr. G. M. Gardner.)

through the burned area it is entirely destroyed. If the planter facia is gone it would cause flat foot without a doubt. I have looked that question up in the authorities—Gray's Anatomy; Gray is the recognized authority in anatomy. There is another muscle, which together with the planter facia,  
736 prevents flat foot—the flexor brevis digitorum muscle. That is also gone.

Cross-examination by Mr. CANNON.

The bones of the foot are held together by tendons. The arch of a person's foot, and the way the bones are fastened has nothing to do with flat foot, the planter facia being destroyed would be the cause.

**[Testimony of P. R. Sheaff, the Plaintiff, in His Own Behalf (in Rebuttal).]**

Mr. P. R. SHEAFF, produced as a witness in his own behalf in rebuttal, testified as follows:

Direct Examination by Mr. GEDNEY.

Mr. GEDNEY.—Q. Mr. Sheaff, while you were working around the substations at Fairview and Wonder with Mr. Halpenny, did Mr. Halpenny ever say to you, “Sheaff, remember  
737 that wire is alive,” or anything of that nature?

Mr. CANNON.—We object on the ground it is not rebuttal. This witness was asked in his direct examination as to whether Mr. Halpenny ever gave him any warning of any kind, and he said that he did not. [450]

The COURT.—I will allow that question.

Mr. CANNON.—We note an exception.



(Testimony of P. R. Sheaff.)

The action of the Court in overruling said objection and allowing said question to be asked and answered is here assigned as

**Error No. 49.**

The WITNESS.—No.

WITNESS.—(Continuing.) While I was  
738 working around the substation at Fairview  
and Wonder, or either of them, Mr. Halpenny  
never said to me, “Keep away from that wire, Sheaff,  
it is hot.” I never made a connection of wires on a  
lamp in either of those substations, when the wires  
were carrying electricity. I never made any connec-  
tion in either of those substations when the wires  
were carrying electricity. At the time Mr. Halpenny  
directed me to go to Fairview and dig the holes and  
put in the cement blocks, or at any other time, Mr.

Halpenny did not tell me not to touch the wires  
739 or make the connections. He didn’t say any-  
thing to me at that time about touching the  
wires, or at any other time. I never installed, or  
helped to install a generator and steam stationary  
engine at Sabrina Lake, or at any other place. I  
never in my life installed, or helped to install a gen-  
erator. The first time I ever spoke to Mr. Poole, or  
he ever spoke to me, was in Hawthorne, Nevada,  
about the 10th of April, 1911.

Mr. GEDNEY.—Q. Mr. Poole said yesterday that  
he had met you, among other places, in Bodie,  
740 California, or near Bodie, California, in your  
life, before this accident?

A. No.

(Testimony of P. R. Sheaff.)

WITNESS.—(Continuing.) The first time I was ever in or near Bodie, was in July of this year. I did not on September 18th, 1911, tell Mr. Chatfield, or say to Mr. Chatfield that without [451] thinking I must have got into the live wires or live end of the arrester, I never said to Mr. Pittman, in reply to a question from him as to how I got hurt, “I  
741 don’t know, I must have forgot.” I never made that reply to Mr. Pittman.

Cross-examination by Mr. CANNON.

I don’t remember being asked in my cross-examination about Mr. Pittman.

Mr. CANNON.—Q. Isn’t it a fact that you were asked about this conversation with Mr. Pittman, and that you said you did not remember whether you had said that to him or not?

A. I don’t remember you asking me any such question in cross-examination.

Q. Is it not a fact you were asked about this conversation with Mr. Chatfield as to your going  
742 into this wire without thinking, and as to that you said, in your cross-examination, that you didn’t remember? Is not that a fact?

A. I don’t remember; I can’t remember all that cross-examination.

Q. You don’t remember as to that either? Now, you say that you were never told by Mr. Halpenny to keep away from hot wires; you managed to keep away from them, did you, without instruction?

A. I don’t know as I ever came near them.

Q. You kept away from them, didn’t you?



(Testimony of P. R. Sheaff.)

A. There was no occasion to go near them.

743 Q. Do you mean to be understood that you never made any attempt to keep away from hot wires at all?

A. I never had to work near them.

Q. Do you mean to be understood that you ignored the presence of electric wires in your neighborhood, and went about your business just the same as though those wire were [452] not there; do you want us to understand you that way?

A. I didn't have to work around them.

WITNESS.—(Continuing.) I would go about just the same as though they were not there, because they were not hot. I could not tell the difference  
744      ence between hot and cold wires. I don't remember any specific recollection of ignoring or taking notice of any particular wires. I ignored them all, just the same as though they were a stick of wood or a bale of hay.

Plaintiff thereupon rested.

Mr. CANNON.—I have another motion which I would like to make in the absence of the jury.

(At 11:10 A. M. the jury was admonished and retired.)

Whereupon the following proceedings were had and taken:

Mr. CANNON.—If the Court please, I wish to make anew, and renew the motion heretofore  
745      made for a peremptory instruction to the jury, and requiring the jury to return a verdict in favor of defendant; and as the ground of the mo-

(Testimony of P. R. Sheaff.)

tion, I wish to set forth and rely upon each and all of the grounds heretofore stated on the motion originally presented. I presume it will not be necessary for me to repeat them at this time, but it will be understood that the motion is remade and renewed upon each and all of the grounds heretofore stated; and I wish to make this motion, of  
746 course, as appearing at the close of the testimony, and upon the settlement of the pleadings; and do not wish to be considered as waiving the motion for a continuance, if we decide to insist upon it. I do not think it is necessary to reargue the motion, because your Honor is familiar with the evidence brought in, and whether it in any manner affects your Honor's judgment in relation to the case.

The COURT.—You wish this considered as made at the time the instructions are requested, and it will be overruled. [453]

Mr. CANNON.—At the proper time, yes.

The COURT.—At the proper time; and it  
747 will be considered as made whenever you wish it. The ruling will be the same, and you may have the same exception that was made to the previous ruling.

Mr. CURLER.—If your Honor please, I have made investigation of the subject respecting the amendment to the complaint, and I find two lines of authorities, one holding that amendment would make the complaint multifarious, and the other line of authorities that it would not; and I now request the Court to be allowed to withdraw the amendment, and



stand on the complaint as originally drawn.

The COURT.—If there is no objection, of  
748 course, it will be permitted.

Mr. CANNON.—We have no objection to counsel withdrawing all of the amendments to the complaint, and having a stipulation that the pleadings will stand exactly as they stood before his amendment was offered. I presume it may be understood, if the Court please, that the motion referred to the other day, shall be deemed to have been made at this time.

The COURT.—It will be deemed to have been renewed and overruled, and the same exception allowed.

The action of the Court in denying said motion for a directed verdict for the defendant is here assigned  
as

749

**Error No. 50.**

The foregoing constitutes all the evidence had or taken at the trial of said cause.

The cause was thereupon argued by respective counsel and at the conclusion of said argument, the Court instructed the jury as follows:

The COURT.—Gentlemen, it is due to you that I [454] apologize for the length of these instructions. Perhaps if I had devoted more time to them, they would have been clearer and shorter. At the present time, this is the best I can do for you.

This action is brought against the Pacific  
750 Power Company to recover the sum of \$40,-  
000.00 damages, \$30,000.00 of which is for physical injuries to plaintiff, alleged to have been

caused by the negligence, carelessness and willful indifference of defendant; and \$10,000.00 for mental anguish suffered and to be suffered by reason of such injuries.

The defendant at the time of the accident was a California corporation, engaged in developing, furnishing and distributing electricity in Nevada and California.

It is charged in the complaint that on the  
751 18th day of July, 1911, while plaintiff was in  
the employ of defendant at Fairview, Churchill  
County, he was ordered to work about and near a  
lightning-arrester, south of the Nevada Hills trans-  
former house and substation. At this time the ar-  
rester was attached to and connected with three high  
tension feed-wires, carrying about sixty thousand  
volts of electricity. The purpose of building and  
maintaining this structure was to provide a vent or  
escape for dangerous quantities of electricity, which  
in excess of the normal and usual voltage might acci-  
dentally or otherwise, find their way on to the  
752 line. This device was of the type usually  
designated as "horn gap" arrester. It was  
so constructed that its three north arms were attached  
one to each of the three high tension feed-wires, and  
consequently each was charged with electricity when-  
ever the feed-wires were carrying a current. The  
lower horn or end of each live arm came within about  
six feet of the ground, and three and one-half feet  
from the south end of the transformer house. On  
the south side of the arrester were three dead arms  
or pipes, ordinarily [455] free from electricity,



corresponding to the three live arms on the  
753 opposite side. The dead arms nowhere came  
in contact with the live arms, or near them, except at the gap, where they were but three and one-quarter inches apart.

On the day of the accident Mr. Sheaff was ordered to dig a hole under the lower end of each of the three dead arms, and to place in each hole a cement block bound with iron clamps. He was at the time, as a part of the instruction, informed that the electrician  
754 would later connect the lower horn of the dead arm with these blocks, and with the ground.

After digging the holes, Mr. Sheaff attempted to pass between the arrester and the south end of the substation. In so doing he came either in such close proximity to, or in such contact with, one of the arms of the arrester, that an electrical current passed through his body, and inflicted the injuries complained of. These injuries he avers are so permanent in character that during the entire remainder of his life he will be deprived of the use of his feet and legs, and suffer great physical pain and anguish, and  
his physical condition and consequent inability  
755 to work or perform manual labor, has caused him great mental anguish and suffering.

It is charged that defendant is responsible for this, because it negligently and carelessly constructed and maintained said arrester at an unsafe and insufficient distance from the ground and the transformer house, and without regard to the security and personal safety of its employees, and sent this plaintiff there to work. Thus it is alleged to have failed and

neglected to furnish plaintiff with a safe place to work.

It is further alleged by plaintiff that at the  
756 time he was employed by defendant as a  
laborer and electrician's helper, and was unfamiliar with the work of a journeyman lineman and electrician, and was unacquainted with and ignorant of [456] the dangers incident to the work of a journeyman lineman and electrician upon or near wires or apparatus carrying electrical current of high voltage, and was receiving only the wages of a laborer or helper; that the dangers and dangerous condition of the arrester were wholly unknown to him before the accident occurred.

Defendant denies any negligence in the construction and maintenance of the arrester, or that it was erected or maintained an insufficient distance  
757 from the ground, or too close to the transformer station, or that defendant was negligent in sending the plaintiff to this place to work. It further alleges that the arrester was erected, placed and maintained in the usual and proper method with due regard to the safety of employees, including the plaintiff, and that the structure was free from defects as a whole, or in any of its parts. Defendant denies that plaintiff was employed as a laborer; admits that he was employed as an electrician's helper. Also denies that he was unfamiliar  
758 with the work of a journeyman lineman or electrician, or with the dangers incident to such work on or near wires or apparatus carrying electric current of high voltage. It alleges that



the place where plaintiff was working was not dangerous, except for those ordinary dangers surrounding all electrical apparatus and appliances, and of these ordinary dangers plaintiff had been fully informed, and had full knowledge. Finally it is denied that plaintiff has by reason of said alleged injuries, or by reason of defendant's said alleged negligence, suffered any damage whatever.

For separate defenses defendant claims that plaintiff was guilty of contributory negligence; in  
759 other words, if he suffered any injury, it was caused, in whole or in part, by his own carelessness.

For a second defense it is alleged that the dangers [457] and risks at the time and place of the accident were open and fully understood by the plaintiff, and consequently he assumed them as a part of his employment.

From the fact that Mr. Sheaff has suffered a grievous injury you cannot infer that the power company must pay for it. It is not the law that the master must compensate his servant whenever the latter, even in the course of his employment, is  
760 disabled or seriously hurt. The master does not absolutely guarantee the safety of his employees. In every case of this kind the inquiry must be as to whether the injury was the direct and proximate result of the fault, neglect or carelessness of the defendant, who is sought to be held responsible therefor. No matter how much the plaintiff's condition may appeal to us and stir our sympathies, he cannot recover unless he was himself free from fault, and

his condition the direct result and consequence  
761 of the company's failure to perform the duty  
which it owed to him as one of its servants.  
Whether we deem this, and other rules which I shall  
state, just and right, is of no moment. It may not  
be amiss to say that the law which we must apply here  
is less favorable to the claims of an injured employee  
than the law in some other states; but this is no con-  
cern of ours. The legislature of this commonwealth  
in its wisdom saw fit to leave the law regulating the  
liability of the master for injuries to his ser-  
762 vants, as it is; and as it is written, not as we  
would have it, or as we believe it should be, we  
must, under our oaths, administer and apply it.

The plaintiff is not entitled to recover for any  
negligent act or omission not set out in his complaint.  
In this connection it is proper for me to say also, that  
he cannot recover for medical care and attention, or  
nurse hire, or medicines, or board or lodging, or loss  
of wages, since, [458] the accident. And this is  
because he has not asked relief for such items. He  
must abide by his cause as he has made it in his com-  
plaint.

763 The power company owed certain duties to  
the plaintiff. Among them was the duty to pro-  
vide him with a reasonably safe place to work, and  
reasonably safe appliances to work with. If he was  
sent by the company to work about its lightning-  
arrester at Fairview, it was its duty to use reasonable  
care to make and keep the place safe, and to use  
such care, diligence and foresight as was commen-  
surate with the danger, and with Mr. Sheaff's ex-



perience known to the company. The greater the danger, the greater should be the care. The  
764 law does not require the place and appliances to be absolutely safe, but it did require of defendant that it should exercise that degree of care in the erection and maintenance of its lightning-arrester which an ordinarily prudent person engaged in the same business, under all the conditions then and there existing, would have exercised. It was its duty in maintaining and using lightning-arresters charged, in whole or in part, with deadly currents of electricity, to furnish, as nearly as reasonably possible, a perfect protection at those points where its employees in the line of their employment might come in contact with live wires. It had no  
765 right merely for its own convenience, or for economical reasons, to unnecessarily hazard the life or safety of its employees. This duty to provide a reasonably safe place to work is so fixed, so obligatory, that the master cannot release himself from responsibility for its violation or nonobservance, by delegating it to some one else. Consequently, if you find that the lightning-arrester was negligently placed too near the ground, or too near the south end of the transformer house, and that this negligence was the negligence [459] of some agent or employee of the company, acting within the scope  
766 of his employment at the time, then it would be the negligence of the company.

While it is the duty of the master to furnish his servant with reasonably safe machinery and appliances with which to work, the machinery and appli-

ances need not be of the best, nor of the most approved pattern. If they are reasonably safe and adapted to the purpose of the employment—that is, if they are such as a reasonably prudent man engaged in the same business under the same condi-

tions, having in view the safety of his employees, and their experience and knowledge and familiarity with the dangers of the business, would use, it is not negligence to use them. If in this case you find, after a consideration of all the evidence, that a reasonably prudent person engaged in the same business as the defendant, under all the conditions which prevailed at the time and place of the accident, and having due and reasonable regard for the safety of his employees, and to their experience, would have built and maintained an arrester so close to the ground and to the end of the trans-

former house as the evidence discloses the arrester in this case to have been, would have sent this plaintiff with his experience, there to work, then you cannot find the defendant was guilty of negligence. The burden of proving such negligence is on the plaintiff, and if it is not proven by a preponderance of the evidence, the plaintiff cannot recover.

You are instructed that the only cause of action which the plaintiff is entitled to have submitted for your consideration, is based upon the charge that the defendant sent the plaintiff to work at a place which

was not reasonably safe, in view of the unusual or extraordinary risks incident thereto, if any there were. You are, therefore, further in-



structed that [460] if you find from the evidence that the place to which plaintiff was sent to work was a reasonably safe place, as that expression or term is hereinafter defined, your verdict must be in favor of the defendant, Pacific Power Company.

This instruction must be understood with this addition: In determining whether there was negligence in sending Sheaff to work about the arrester, you should consider the situation and conditions, and what the power company knew of his experience and familiarity with electricity and electrical arms  
770 and appliances, lightning-arrester, and the dangers thereof.

Although the place to which an employee is sent to work may be actually dangerous, it may, notwithstanding, be a reasonably safe place to work within the meaning of the law relating to the duty of an employer toward his employees. Some occupations are essentially dangerous, and some places where employees are obliged to work are essentially dangerous, but it does not follow that an employer is negligent in sending an employee to work in such dangerous place. Dangerous work, such as working about electricity, is lawful and must be done. Therefore, an em-  
771 ployer has a right to set an employee at such work, or to direct him to work in a dangerous place, and an adult employee, who accepts such work, fully knowing and appreciating its dangers, takes upon himself the risks of the dangers incident thereto—the extraordinary dangers as well as the ordinary dangers. But in this connection it is proper that I should say that it may be negligence

to send one man into a place where it would not be negligence to send a man of larger experience and capacity. The employer has the right to pre-  
772 sume in the absence of knowledge to the contrary, that an employee who accepts a particular kind of work, and receives the ordinary and usual compensation for such work, has the knowledge, [461] discretion and experience of the average employee of his age and intelligence, for that kind of work. And in like manner, where an employee engages himself for a specific work, and receives the ordinary and usual compensation paid by his employer for such work, the employer, in the absence of knowledge to the contrary, has the right to presume that the employee has the requisite knowledge, experience and familiarity with the  
773 dangers. On the other hand, the employee has a right to presume, in the absence of any knowledge to the contrary, that the master has taken every reasonable precaution which a reasonably prudent person in the same business, under the same circumstances, would take to make safe the place where he is assigned to work, and not to send him into a place where the dangers are those with which he is not familiar.

The company, in the absence of any information to the contrary, had a right to assume that Sheaff was acquainted with the duties of an electrician's helper, and the dangers ordinarily incident thereto.  
774 Now, if the defendant is found not to have been negligent in this respect, that ends the case. But if you find that the defendant was negligent in



this respect, and that this negligence was the direct and proximate cause of the injury, then it will be your duty to inquire as to whether the accident was due, in part or altogether, to Sheaff's own default, or whether he must be held to have assumed the risks and dangers by entering into the employment and continuing therein.

In this case defendant has interposed among other defenses, the defense of contributory negligence, and in this connection the defendant  
775 claims that the injury received by the plaintiff was proximately contributed to by his own carelessness and negligence in failing to exercise his natural faculties in order to avoid injury, and in failing to conduct himself in a reasonably prudent manner while engaged in and about [462] his work, and in going to and from his employment. The defendant also claims that the accident was due wholly to the plaintiff's negligence. Sheaff cannot be deemed to have been in fault for the reason that he failed to  
776 take precautions which he did not know to be necessary for his safety, and his right to recover will not be barred on the ground that he was guilty of contributory negligence, if the right to recover otherwise existed, unless it is shown that he knew, or ought to have known, not only that the act of going around the lightning-arrester on the side he was going at the time he was injured was an imprudent act, but also that he comprehended the danger to which the condition of the lightning-arrester, and his passing around it on that side, exposed him.

777        The defense of contributory negligence is an affirmative one, to be established by a preponderance of the proof introduced and admitted in the entire case. In other words, you cannot *assumed* that plaintiff was guilty of contributory negligence; such negligence must be shown by a preponderance of the evidence, and the burden of showing this is upon the defendant. If the fact of contributory negligence is disclosed by the evidence of the plaintiff himself, or by the evidence altogether, and by a preponderance of that proof, you are warranted in finding it to be a fact.

778        Contributory negligence is such an act or omission on the part of the plaintiff amounting to a want of ordinary care, as concurring or co-operating with the negligent act of the defendant, is the proximate cause of, or proximately contributes to the injuries complained of.

If you find that plaintiff was sent by his superior to the substation at Fairview with instructions to dig the holes and place therein concrete blocks at the dead side of the lightning-arrester in question, and that the plaintiff, by exercising [463] ordinary care for his own safety, might have avoided injury

779        from the live wire or wires on said lightning-arrester, but that he received injuries from such live wire or wires in consequence of his failure to exercise such ordinary care for his own safety, as, under the circumstances, and his knowledge and experience, he should have exercised, he is guilty of contributory negligence.

If you find that on the day of the accident to the



plaintiff there was on the door of the substation at Fairview, a danger sign; that there was a fence around the lightning-arrester; that there was a danger sign on one of the posts used in the construction of the switch; that the live wires of the lightning-arrester were in plain view of the plaintiff; that the connection of such live ends with the high-tension wire overhead was in plain view of plaintiff; that there was a current on the high-tension wires overhead, and that the transformers were making an audible purring noise; that the plaintiff heard said purring noise, and knew, or ought to have known, that there was a current of electricity being carried on said high tension wires; that he saw, or ought to have seen, said danger sign on the door of said substation; that he saw, or ought to have seen, said danger sign on said switch-post; that he saw, or ought to have seen, said live ends of said lightning-arrester and their connection with the high-tension wires above, and that from all such facts and circumstances taken in connection with the character of his employment and his experience therein, and his age and experience, intelligence and capacity, he either knew and appreciated, or should have known and appreciated, the danger of coming into contact with, or close proximity to, either of the live ends of said lightning-arrester, and that notwithstanding such knowledge and appreciation, through inadvertance, inattention, or forgetfulness, he came either into [464] contact with, or in such close proximity to, one of the live ends of said lightning-arrester that he received a

shock and suffered injury therefrom, he was guilty of contributory negligence.

If you find that the plaintiff in going about the performance of the work which he had been sent to do on the day of the accident, had two equally available ways open to him by which he could go to or return from the place of his said employment, 783 that he could by the exercise of such knowledge and experience as he possessed, or by his powers of observation as an adult of ordinary experience, intelligence and capacity, have observed and appreciated the danger of one of said ways, if any, that he went to the place where his work was to be performed, by the safe way, performed his work in safety, and elected to return by the dangerous route, and in consequence of such action on his part he received the injuries complained of, this, also, would be contributory negligence.

In deciding whether Sheaff knew, or could 784 have known, of the dangerous condition, you should consider all the circumstances and conditions, as well as his knowledge and experience. He, on his part, was entitled to assume that the Power Company had taken every precaution to make safe the place where he was directed to work, and that the company would not negligently expose him to danger of which he was ignorant and unfamiliar to their knowledge.

If you find plaintiff was guilty of contributory negligence, you must find for the defendant.

The second defense interposed by defendant reads as follows:



“All of the conditions surrounding the  
785 plaintiff at the time of the accident alleged in  
plaintiff’s complaint, and all of the dangers  
and risks incident thereto, were open [465] and  
explained to, and understood by the plaintiff, and  
plaintiff had full knowledge thereof, and such dan-  
gers and risks were assumed by him as a part of his  
employment.”

If this allegation of the answer is established by  
a preponderance of the evidence—and the burden is  
upon the defendant to so establish it—unless it is  
shown by the testimony, the plaintiff cannot recover.

A brief statement of the doctrine of assumption of  
risk is as follows:

786 A servant by entering into and continuing  
in the employ of a master without complaint,  
assumes the ordinary risks and dangers of the em-  
ployment, as well as the extraordinary danger which  
he knows and appreciates.

A familiar illustration of this might be where a  
man hired out to you to feed a threshing-machine;  
the danger of bringing his hand or fingers in con-  
tact with the revolving cylinder is open and obvious,  
and that is one of the dangers which he assumes; it  
is one of the dangers incident to the business;

787 and if he gets his fingers or his hand in con-  
tact with the cylinder, and is injured, he can-  
not recover. But if there is a defect in the cylinder  
of which he had no knowledge, and in consequence  
of which the cylinder breaks or flies in pieces, and he  
is injured, he can recover, provided he did not know  
of it, and provided further the defect was one which

was known by the owner of the machine, or one which he could have discovered if he had performed his duty of inspecting the machine and the cylinder in the way that men engaged in that business  
788 ordinarily do. Now, the feeder, in such a case as that, assumes the ordinary risks; that is, the risks and dangers of bringing his hand in contact with the revolving cylinder; but he does not assume the risk of defects in the machinery, which he did [466] not know, and which are there or undiscovered by reason of the carelessness of his employer.

Plaintiff's action here is based on the power company's alleged negligence in sending him to work about the arrester, and in placing the live arms of the arrester too near the ground, and in too close  
proximity to the transformer house. If in  
789 this the company was negligent, if under all the circumstances, it was a reasonably safe place for Sheaff to work, there is no case, and the plaintiff cannot recover. Under such circumstances, even though the place were dangerous, the danger would be one of the ordinary risks of the business which Sheaff assumed. But on the other hand, if the power company was negligent in so placing the arrester, and in sending Sheaff there to work, it was not an ordinary risk of the business, within the meaning of the rule, because a servant does  
790 not assume the risk and dangers incident to his master's negligence—to his master's negligent failure to provide him with a safe place to work. Such a risk is an extraordinary risk, and is not as-



sumed by the servant, unless he knew and comprehended the danger, or unless it was so plainly observable, considering his knowledge and experience, that he must be taken to have known and comprehended it.

In this case if you find that placing the lower horn of the live arms of the lightning-arrester so near the ground and the station, was negligence on the  
791 part of the company, you cannot find Sheaff assumed the danger and risks thereof, by entering into and continuing in the employment of the defendant, unless at the time of and before the accident, he was aware of and appreciated the dangers, or unless that fact was so open and obvious, in view of his knowledge and experience and the surrounding conditions, that he ought or must have known it by the exercise of his senses. [467]

The complaint does not allege that the plaintiff was unfamiliar with or ignorant of the ordinary duties of an electrician's helper, and does not allege  
792 that the plaintiff was ignorant of the ordinary risks and dangers of his employment as an electrician's helper, therefore it must be taken as an admitted fact in this case, so far as the charge of negligence against the defendant is concerned, that plaintiff was familiar with the ordinary duties of an electrician's helper, and comprehended all of the usual and ordinary risks and dangers attendant to said employment, save as this admission is modified and limited by the allegation that he was unfamiliar with the work of a journeyman lineman and electrician, on or near wires or apparatus carrying

electrical current of high voltage, and that  
793 said place was a dangerous place in which to  
work by reason of the fact that the live arms  
of said lightning-arrester were so near the ground  
and in such close proximity to said substation, and  
that said dangerous conditions were wholly un-  
known to plaintiff herein, and plaintiff was ignorant  
of the same.

The plaintiff in this case, who was an electrician's  
helper, must be presumed, in the absence of testi-  
mony to the contrary, to have known, understood  
and appreciated all of the ordinary risks and dan-  
gers incident to said employment, and if the  
794 risk and danger, if any, attendant upon his  
employment upon the day of his injury, were  
of such a character that they should have been under-  
stood and appreciated by him as an electrician's  
helper, he assumed the risk.

The law supposes every adult person to possess  
such ordinary intelligence, judgment and discretion  
as will enable him to appreciate any obvious danger.  
The master, therefore, has the right to assume that  
an adult employee possesses that knowledge which  
is acquired by common experience, and that he  
[468] knows everything which is a matter of com-  
mon knowledge, or presumed to be within the  
795 common experience of all men of common  
education; that he understands those dangers  
which are the subject of common knowledge, or which  
can be readily seen by common observation. The  
defendant, Pacific Power Company, therefore had a  
right to assume, in the absence of knowledge to the



contrary, that the plaintiff Sheaff, who was an adult employee, possessed that knowledge which is acquired by common experience; that he knew everything which was a matter of common knowledge, or presumed to be within the common experience of all men of ordinary education; that he, Sheaff, understood those dangers which are the subject of  
796 common knowledge, or which can be readily seen by common observation. If, therefore, the dangers, if any, which attended the employment of Sheaff on the date of his injury, were such as were the subject of common knowledge, or which could be readily seen by common observation, you are instructed that plaintiff assumed the risk thereof.

The mortality table introduced in evidence, relating to the expectancy of life of the plaintiff, while receivable as evidence on that subject, is not at all conclusive. It does not preclude the jury from exercising and acting upon their own judgment,  
797 even though it may conflict with such table.

It is a matter of common knowledge that human life is uncertain, and that it is impossible to foretell how long any one will live. This subject, therefore, is one which must, in the last analysis, rest in the sound judgment and discretion of the jury, considering the plaintiff's age at the time of the accident, his physical condition, his occupation, whether dangerous or otherwise, and all other circumstances which may appeal to the jury as reasonable men.

In considering this testimony, gentlemen, you must [469] remember that it is always easy to be

wise after the event; and it is easy for us to  
798 see what could have been done to avoid this  
injury; but in determining what the plaintiff  
knew, and whether he exercised proper care, and in  
determining whether defendant exercised that care  
which it should have exercised, you are to place your-  
selves, as nearly as you can, in the conditions as they  
existed at and before the time of the accident.

If you find that plaintiff is entitled to a verdict,  
you are not permitted to fix the amount by lot  
799 or chance, or by average. It is improper for  
one or more members of the jury to separately  
fix the damages, add these together, and divide by  
any number, agreeing beforehand that the result so  
obtained shall be the verdict; or for each member of  
the jury to set down a figure he thinks fair, and add  
these several amounts, and divide the aggregate by  
twelve, agreeing beforehand that such result shall be  
the verdict.

You are the exclusive judges of the facts, of the  
credibility of the witnesses, and of the weight which  
is to be given to the statement made by each witness.

Counsel may declare what is proven, and the  
800 Court may express his views as to the facts;  
you, however, are to listen to such utterances,  
and give them such consideration, and such con-  
sideration only, as in your judgment you deem  
proper and reasonable as intelligent and honest men.

As to the law, the rule is different. You are to  
follow the instructions of the Court. If the Court  
errs in its statement of legal principles, it is the  
error of the Court, for which the Court alone is re-



sponsible, and not the jury.

It is hardly necessary for me to remind you  
801 that you are to consider only those facts  
which are disclosed by the testimony here admitted. You cannot go outside of or beyond the testimony. The plaintiff is not entitled to a verdict on any [470] ground of negligence not set out in his complaint, neither is he entitled to recover in this action unless you believe from a preponderance of the evidence that the injury was the natural and proximate result of some wrongful act, neglect or default of the defendant which is set out in the complaint.

By a preponderance of evidence is meant that evidence which after a consideration of all the  
802 evidence, is entitled to greater weight; it is such evidence as when compared with that opposed to it, has the more convincing force. The burden of proving his case by a preponderance of the evidence rests on the plaintiff. The burden of proving its affirmative defenses rests upon the defendant. As I have already intimated, the defendant cannot be charged with responsibility for the injury to the plaintiff, unless the injury was the direct and proximate consequence and result of the negligence and default of the defendant. A proximate cause of an event is defined as that which in the  
803 natural and continuous sequence, unbroken by any new independent cause, produced that event, and without which the event could not have occurred.

A witness is entitled to the greatest weight, every-

thing else being considered, who has the best opportunity to know, and the highest degree of intelligence in seeing, understanding and weighing whatever appears before him in relation to the subject on which he is being examined. A witness is presumed to speak the truth; this presumption, however, may be repelled by the manner in which he testifies, by his demeanor on the witness-stand, by the character of his testimony, by his motives, or by contradictory evidence, or by his interest in the outcome of the case.

In judging the credibility of the respective witnesses in this case, if there is any conflict you may believe the whole or any part of the evidence of any witness, and if [471] you believe that a witness has testified falsely, and has done so knowingly and willfully, as to any material matter, you may disregard the whole or any part of his testimony as may be dictated by your best judgment, save where  
805 it is corroborated by other credible testimony.

But if a witness appears to have stated that which is untrue, but to have done so through some mistake or misunderstanding, it will warrant you in viewing his testimony and scrutinizing it with more care than otherwise you would.

In this connection you must remember that your power and duty to judge of the effect of the evidence is not an arbitrary one, it must always be exercised with legal discretion, and in subordination to the rules of evidence.

It takes twelve of your number to find a verdict.



The clerk has prepared two forms of verdict,  
806 and when you have retired to your jury-room,  
you will elect a foreman; when you have  
agreed upon your verdict, you will notify the mar-  
shal, and you will be brought into court.

Now, gentlemen, I will leave this case with you,  
and I wish to say I do it with the utmost confidence.  
You have listened to this evidence very patiently and  
very carefully. The hearing of the case has taken  
considerable time. You are to remember that you  
are here simply to find the truth, and to do that  
which is just and right between these two  
807 parties. You are not to be swayed by sym-  
pathy; you are not to decide against one party  
because it is a corporation, or in favor of the other  
party because he is a laboring man. You are not to  
be influenced by the condition, by the wealth or by  
the poverty of either party; you are simply to give  
a verdict, just and fair, which your own conscience  
will approve, and to do that which is right between  
man and man.

Now, gentlemen, are there any exceptions? [472]

Mr. CANNON.—We except to the modification of  
defendant's requested instruction number 3, which  
as proposed read as follows:

808 “You are instructed that the only cause of  
action, which the plaintiff is entitled to have  
submitted to you for consideration, is based upon  
the charge that the defendant sent the plaintiff to  
work at a place which was not reasonably safe in  
view of the unusual or extraordinary risks incident  
thereto, if any there were.

“You are, therefore, further instructed that if you find from the evidence that the place to which plaintiff was sent to work was a reasonably safe place, as the expression or term is hereinafter defined,  
809 your verdict must be in favor of the defendant, Pacific Power Company.”

The COURT.—You will be entitled to your exception, because I modified number 3 decidedly.

The action of the Court in modifying said instruction is here assigned as

**Error No. 51.**

Mr. CANNON.—We except to the modification of instruction number 4-A, which as proposed read as follows:

“The complaint does not allege that the plaintiff was unfamiliar with or ignorant of the ordinary duties of an electrician’s helper, and does not allege that the plaintiff was ignorant of the ordinary risks and dangers of his employment as an electrician’s helper. You are, therefore, instructed that  
810 it must be taken as an admitted fact in this case, so far as the charges of negligence against the defendant are concerned, that the plaintiff was familiar with the ordinary duties of an electrician’s helper and comprehended all of the usual and ordinary risks and dangers attending the said employment.”

The COURT.—I excluded that. You may have your [473] exception. The modification was on the ground and for the reason that a servant cannot be presumed, as a matter of law, to assume the dan-



gers incident to an employment in which he  
811 was not engaged. There is an assumption in  
4-A that Sheaff was acquainted with the dangers incident to the work of a journeyman lineman and electrician. There is no admission in the pleadings which will warrant me in so instructing the jury.

The action of the Court in modifying and excluding said instruction is here assigned as

**Error No. 52.**

Mr. CANNON.—I think number 4-B was not given at all, therefore, I except to that. Said instruction number 4-B, as proposed, read as follows:

“The complaint does not allege that the plaintiff was unacquainted with or ignorant of all of the  
812 dangers incident to the work of a journeyman lineman and electrician, but does state that the plaintiff was unacquainted with and ignorant of the dangers incident to the work of a journeyman lineman and electrician upon and near wires or apparatus carrying electric current of high voltage and potential energy. You are instructed, therefore, that in so far as the charges of negligence against the defendant are concerned, it must be taken as an admitted fact in the case that the plaintiff was acquainted with and not ignorant of any of the dangers incident to the work of a journeyman lineman  
813 and electrician, excepting upon or near wires or apparatus carrying electric current of high voltage and potential energy. As to all other matters relating to such duties and dangers he must be deemed, in so far as negligence against the defendant

is concerned, to have had knowledge of such dangers.”

The COURT.—Number 4-B I declined to give. You may have an exception to Number 4-B. [474]

The action of the Court in refusing to give said requested instruction is here assigned as

**Error No. 53.**

814 Mr. CANNON.—Number 4-C was not given. Instruction Number 4-C, as proposed, read as follows:

“The complaint, as amended, charges as one of the alleged defects of the lightning-arrester that it was placed or constructed too close to the substation building.

You are instructed that the evidence fails to sustain this charge, and you will, therefore, ignore it in arriving at your verdict.”

Mr. CANNON.—We note an exception to that.

The COURT.—I declined to give that also, so you will have an exception to number 4-C.

The action of the Court in refusing to give said requested instruction is here assigned as

**Error No. 54.**

815 Mr. CANNON.—And number 5, I think, was not given.

Said instruction, as proposed, read as follows:

“Certain evidence has been admitted in the case with respect to the question as to whether or not the defendant warned the plaintiff as to the dangers attending the work, upon which he was engaged at the time of the accident, if any, and whether the defendant instructed him as to how to avoid such danger.



In this connection you are instructed that the complaint does not set forth any cause of action  
816 against the defendant based upon any alleged failure of the defendant to give the plaintiff any such warning or instruction, and you cannot, therefore, find the defendant guilty of negligence on that ground.”

Mr. CANNON.—We note an exception to that.  
[475]

The COURT.—Number 5 it seemed to me was out of the case. It is based on the amendment which plaintiff has withdrawn.

Mr. CANNON.—The object of the instruction was to put it out of the case absolutely.

The COURT.—It is out of the case.

Mr. CANNON.—Then your Honor has not given that?

The COURT.—I don't think that is in the case.

Mr. CANNON.—We will note an exception  
817 to that.

The action of the Court in refusing to give said requested instruction is here assigned as

**Error No. 55.**

Mr. CANNON.—Number 5-B was modified.

Instruction number 5-B, as proposed read as follows:

“Although the place to which an employee is sent to work may be actually dangerous, it may, notwithstanding, be a reasonably safe place to work within the meaning of the law relating to the duty of an employer toward his employees. Some occupations are essentially dangerous, and some places where

employees are obliged to work are essentially  
818 dangerous, but it does not follow that an employer is negligent in sending an employee to work in such dangerous place. Dangerous work, such as working about electricity, is lawful and must be done.

Therefore, an employer has a right to set an employee at such work or to direct him to work in a dangerous place, and an adult employee, who accepts such work, takes upon himself the risk of the ordinary dangers incident thereto. The greater the risk and danger of the particular work or the particular  
819 place, the greater is the risk which the employee assumes. It is only concealed and latent dangers, or dangers of which he does not or should not know and appreciate the risk, [476] for which the employee does not assume the responsibility. Therefore, if an employee is sent to work in a dangerous place, but the dangers, even though great, are open, plain and obvious and such as are or should be known to an adult person of ordinary intelligence and capacity, such place is under the law a reasonably safe place to work, and the employer is  
820 not responsible for any injury that may be sustained by the employee through or by reason of such dangers."

Mr. CANNON.—I note an exception to the modification; and that latter half of it, I think was not given.

The COURT.—I intended to give that, in substance. If you have been harmed by an omission there, I wish you would put your finger on it.



Mr. CANNON.—My recollection is that your Honor gave about one-half of it, and then inserted a modification, and left out the rest.

The COURT.—I did, but I have given the rest, in substance, elsewhere. I shall not allow the exception unless you show where you are harmed.

821 Mr. CANNON.—I think I will be able to point that out. I don't think your Honor gave this, that "the greater the actual risk and danger of the particular work or the particular place, the greater is the risk which the employee assumes."

The COURT.—I will give that.

Mr. CANNON.—That will be considered as given, then?

The COURT.—It don't make any difference how great the dangers are if the employee understands and appreciates them, and voluntarily goes to work, under such conditions he assumes the risk. That will be understood as given.

822 Mr. CANNON.—I don't remember that this was given: "It is only concealed and latent dangers, or dangers of which [477] he does not or should not know and appreciate the risk, for which the employee does not assume the responsibility." I don't remember that your Honor said anything about concealed or latent dangers in your instructions.

The COURT.—I have said that he did not assume the dangers and risks of the employer's negligence, and I don't think this statement is exactly true, that "it is only concealed and latent dangers, or dangers of which he does not or should not know and appre-

823 ciate the risk, for which the employee does not  
assume the responsibility.” I don’t think  
that statement of the law is precisely correct  
—it is not complete.

Mr. CANNON.—We will note an exception to that.  
Then the latter part of the instruction, from the word  
“therefore.”

The COURT.—That has already been given.

Mr. CANNON.—Your Honor thinks that has been  
given substantially as there presented?

The COURT.—I think so. I didn’t give it in your  
language, but it has been given.

Mr. CANNON.—I would like to note an exception  
as to such variation or modification as there may  
have been from that expression.

824 The COURT.—Well, I cannot allow the ex-  
ception unless you show how you are harmed.

Mr. CANNON.—I think we are entitled to have it  
stated in that form, that under that state of facts  
the employer is not responsible.

The COURT.—There is another very serious ob-  
jection. The proposed instruction reads: “If an  
employee is sent to work in a dangerous place, but  
the dangers, even though great, are open, plain and  
obvious and such as are or should be known to an  
adult person of ordinary intelligence and capacity,  
[478] such place is under the law a reasonably safe  
place to work.”

825 I cannot, as a matter of law, instruct the  
jury that a dangerous place, no matter how  
dangerous it is, and how unnecessarily dangerous it  
is, is a safe place to work, if the servant knows and



appreciates the danger.

Mr. CANNON.—May I have an exception, your Honor?

The COURT.—You may have an exception.

The action of the Court in modifying said instruction is here assigned as

**Error No. 56.**

Mr. CANNON.—And number 5-C, I don't believe that instruction was given.

826      Instruction number 5-C, as proposed, read as follows: "If you find that the defendant sent the plaintiff to work in a place which was actually dangerous, but the danger thereof was open and obvious and should have been known and appreciated by him, I instruct you that the place to which he was sent was reasonably safe, and his employer cannot be held responsible for injuries suffered by him through or on account of such dangers."

Mr. CANNON.—That is practically the same proposition to which your Honor has just allowed an exception.

The COURT.—You may have an exception.

The action of the Court in refusing to give said requested instruction is here assigned as

827      **Error No. 57.**

Mr. CANNON.—Number 15, I would like an exception to that.

Instruction number 15, as proposed, read as follows:

"You are instructed that the danger attending the [479] employment of the plaintiff at the time of

his injury was open, patent and obvious and such as should have been known and appreciated by an adult person of ordinary intelligence, experience and capacity. This being so he assumed all the risks thereof, and your verdict must, therefore, be in favor of the defendant.”

The COURT.—The exception will be allowed to that.

828       The action of the Court in refusing to give said requested instruction is here assigned as  
**Error No. 58.**

Mr. CANNON.—I don’t believe that your Honor gave this instruction, either in substance or effect: “You are instructed that the question as to whether the lightning-arrester described in the complaint and involved in this action was of proper design and construction or placed at an improper place is of no importance or materiality in this case except in so far as the position in which said lightning-arrester was placed bears upon the question as to whether the employer furnished his employee with a  
829       reasonably safe place to work considering all of the ordinary dangers incidental to his employment.”

If your Honor gave that instruction I didn’t hear it, and I think we are entitled to have that point differentiated.

The COURT.—I will give it. (Addressing the jury.)

You are instructed that the question as to whether the lightning-arrester described in the complaint and involved in this action was of proper design and con-



struction is of no importance or materiality in this case, except in so far as the position in which said lightning-arrester was placed bears upon the  
830 question as to whether the employer furnished his employee with a reasonably safe place to work considering all of the ordinary dangers incidental to his employment, and considering also what he knew of Mr. Sheaff's knowledge and experience. [480] If, therefore, you find that the place where the employee was sent to work was not unsafe, tested in this way, had he used ordinary care in the performance of his duties, I instruct you that it makes no difference in this case whether said lightning-arrester was placed too near the ground or not; in other words, if the place of plaintiff's  
831 employment was such a distance from the live ends of the lightning-arrester that they did not make his place of employment dangerous, if he had used proper care in the performance of his duties; and in determining what proper care is, you must consider all the conditions, and consider his knowledge and his experience, as it is disclosed in the evidence. I instruct you even if the lightning-arrester were placed too near the ground, that fact, under such circumstances, was not the proximate cause of his injury.

Mr. CANNON.—I do not believe number 1-C was given.

832 Instruction number 1-C, as proposed, read as follows:

“The plaintiff does not demand in his complaint any damages for estimated loss of earnings or earn-

ing power in the future. You will, therefore, in the event that you find a verdict in his favor, allow him nothing as damages for loss of earnings or earning power in the future. Not having demanded any such damages he cannot recover them in this action.”

The COURT.—No, it was not. You may have an exception to that.

The action of the Court in refusing to give said  
833 requested instruction, is here assigned as

**Error No. 59.**

The COURT.—One of the jurors has asked something about the damages, and what their duty is. I will give this instruction, though it was not included in those which has already [481] been given. (Addressing jury.) In this case the plaintiff has asked \$30,000.00 for personal injuries, and \$10,000.00 for mental worry and anguish. You are to give him what is the exact equivalent of his injuries; nothing more and nothing less, pro-  
834 vided you find in his favor. There are two forms of damages recognized by the law—compensatory damages and exemplary damages. Exemplary damages mean smart-money, something which is inflicted in addition to actual compensation, by way of punishment. That, however, is not in this case. If you find for the plaintiff, you can give him what will be the exact equivalent of his injuries.

The Clerk has prepared two forms of verdict. One of them is, “We, the jury in the above-entitled cause, find for the defendant.” If you find for the defendant there are no damages to be fixed.  
835 The other form is: “We, the jury in the above-entitled cause, find for the plaintiff, and assess



the damage in the sum of \$———.” If you find for the plaintiff, you will insert the damages, and the foreman whom you select will date and sign the verdict.

Thereupon the jury retired to consider of their verdict, and returned into Court with the following verdict, to wit:

“We, the jury in the above-entitled cause, find for the plaintiff, and assess the damages at \$15,000.00.

Dated December 23d, 1913.

GEO. PLUMMER,

Foreman.” [482]

836

---

*In the District Court of the United States, in and for  
the District of Nevada.*

No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Stipulation [as to Original Exhibits].**

It is hereby stipulated and agreed by and between the respective parties hereto, that all of the original exhibits used on the trial of the above-mentioned action in the District Court of the United States, in and for the District of Nevada, may be transferred from said court to the United States Circuit Court of Appeals, for the Ninth Circuit, and used on the hear-

ing and determination of the appeal of the de-  
837 fendant from the judgment therein entered,  
with the same force and effect as if the same  
had been incorporated in the said Bill of exceptions  
and set out in the original and copies of the tran-  
script to be filed in the above-entitled action.

Dated March 1st, 1915.

WILLIAM M. ABBOTT,  
WILLIAM M. CANNON,  
METSON, DREW & MACKENZIE,  
GEORGE A. BARTLETT,

Attorneys for Appellant.

B. F. CURLER,

Attorney for Respondent. [483]

(Aforesaid Title of Court and Cause.)

**Admission of Service of Copy of Bill of Exceptions.**

Due service and receipt of a copy of the  
838 within Bill of Exceptions is hereby admitted  
this 1st day of March, 1915.

B. F. CURLER,

Attorney for Plaintiff. [484]

---

(Aforesaid Title of Court and Cause.)

**Stipulation to Correctness of Bill of Exceptions.**

It is hereby stipulated and agreed by and between  
the attorneys for the respective parties to the above-  
entitled cause that the foregoing Bill of Exceptions  
is correct, and that the same may be certified and  
authenticated by the Honorable E. S. Farrington,



Judge before whom said cause was tried, as a full,  
true and correct Bill of Exceptions.

839 Dated this 1st day of March, 1915.

B. F. CURLER,

Attorney for Plaintiff.

WILLIAM M. ABBOTT,

WILLIAM M. CANNON,

METSON, DREW & MACKENZIE,

GEORGE A. BARTLETT,

Attorneys for Defendant.

(Aforesaid Title of Court and Cause.)

**Order Settling Bill of Exceptions.**

That said Bill of Exceptions was duly prepared and submitted within the time allowed by the order of the Court, and is now signed, sealed and settled as and for the Bill of Exceptions in the above-entitled cause, and the same is hereby ordered to be a part of the record in said action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 4th day of March, 1915.

E. S. FARRINGTON,

Judge.

840

12

---

852

2 87

---

854 87 [485]

*In the United States Circuit Court of Appeals, Ninth  
Circuit.*

No. 1571.

PACIFIC POWER COMPANY, a Corporation.

Plaintiff in Error,

vs.

P. R. SHEAFF,

Defendant in Error.

**Order Extending Time to File Record on Writ of  
Error and Docket Cause.**

Good cause appearing therefor, it is ordered that the plaintiff in error in the above-entitled cause may have to and including April 30th, 1915, within which to file its record on writ of error and docket the cause in the United States Court of Appeals for the Ninth Circuit.

Dated April 2, 1915.

E. S. FARRINGTON,

United States District Judge for the District of  
Nevada.

[Endorsed]: U. S. Circuit Court of Appeals, Ninth Circuit. Pacific Power Company, a Corporation, Plaintiff in Error, vs. P. E. Sheaff, Defendant in Error. Order Extending Time to File Record on Writ of Error and Docket Cause. Filed April 2, 1915. T. J. Edwards, Clerk. By H. D. Edwards, Deputy. Wm. M. Abbott, Wm. M. Cannon, Geo. A. Bartlett, Attorneys for Defendant in Error.  
[485½]



*In the District Court of the United States for the  
District of Nevada.*

No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**[Certificate of Clerk U. S. District Court to Transcript of Record, etc.]**

I, T. J. Edwards, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that the foregoing Four Hundred and Eighty-five (485) typewritten pages, numbered from 1 to 485, inclusive, to be a full, true and correct copy of the record and of all proceedings in said cause and court, and that the same, together with the original Citation and Writ of Error, hereto annexed, constitute the return to the Writ of Error.

I do hereby certify that the cost of the foregoing record is \$463.60, and that the same has been paid by the defendant herein.

I further certify that pursuant to Stipulation, found on page 483 of this record, I have this day forwarded to the Clerk of the U. S. Circuit Court of Appeals, Plaintiff's Original Exhibits, numbered 1 to 8, inclusive, and Defendant's Exhibits, marked "A" to "S," inclusive, introduced and filed in said cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, at my

office in Carson City, Nevada, this 29th day of April, 1915.

[Seal]

T. J. EDWARDS.

Clerk.

[Ten Cent Internal Revenue Stamp. Canceled  
4/29/15. H. D. E.] [486]

---

No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

**Answer to Writ of Error.**

The answer of the Judge of the District Court of the United States for the District of Nevada.

The record and all proceedings of the plaint whereof mentioned is within made, that all things touching the same, we certify under the seal of our said court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

T. J. EDWARDS,

Clerk. [487]



No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.**Writ of Error.**

United States of America,—ss.

The President of the United States, to the Honorable, the Justices of the District Court of the United States in and for the District of Nevada, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Pacific Power Company, a corporation, plaintiff in error, and P. R. Sheaff, defendant in error, a manifest error hath happened to the great damage of the said Pacific Power Company, a corporation, plaintiff in error, as by its complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, [488] on the 5th

day of April next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable E. J. FARRINGTON, United States Judge, for the District of Nevada, the 6th day of March, in the year of our Lord one thousand nine hundred and fifteen.

[Seal]

T. J. EDWARDS,

Clerk of the District Court of the United States in  
and for the District of Nevada.

Allowed by:

E. J. FARRINGTON,

Judge. [489]

[Endorsed]: No. 1571. In the District Court of the United States for the District of Nevada. P. R. Sheaff, Plaintiff, vs. Pacific Power Company, a Corporation, Defendant. Writ of Error. Filed March 6th, 1915. T. J. Edwards, Clerk U. S. Dist. Court, Dist. Nevada. [490]

---

No. 1571.

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.



**Citation on Writ of Error.**

United States of America,—ss.

The President of the United States to P. R. Sheaff,  
Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days hereof pursuant to a writ of error filed in the clerk's office of the District Court of the United States in and for the District of Nevada, wherein Pacific Power Company, a corporation, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against said plaintiff in error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

WITNESS, the Honorable E. S. FARRINGTON,  
United States Circuit Judge for the District of Nevada, this 6th day of March, A. D. 1915.

E. S. FARRINGTON,  
United States District Judge. [491]

---

*In the District Court of the United States, for the  
District of Nevada.*

P. R. SHEAFF,

Plaintiff,

vs.

PACIFIC POWER COMPANY, a Corporation,  
Defendant.

AFFIDAVIT OF MAILING.

Jonathan Payne, being duly sworn, deposes and says: That he is a citizen of the United States over twenty-one years of age; that he deposited in the postoffice at Carson City, Nevada, on the 6th day of March, 1915, a copy of the Citation on Writ of Error to which this affidavit is attached, together with a copy of the Writ of Error in the foregoing entitled action, in a sealed envelope, with postage prepaid thereon, addressed to attorney for defendant in error, Hon. B. F. Curler, Elko, Elko County, Nevada.

JONATHAN PAYNE.

Subscribed and sworn to before me this 6th day of March, A. D. 1915.

[Seal]

T. J. EDWARDS,

Clerk U. S. District Court, District of Nevada.

By H. S. Edwards,

Deputy. [492]

[Endorsed]: No. 1571. In the District Court of the United States for the District of Nevada. P. R. Sheaff, Plaintiff, vs. Pacific Power Company, a Corporation, Defendant. Citation on Writ of Error. Filed March 6th, 1915. T. J. Edwards, Clerk U. S. Dist. Court, Dist. of Nevada.



[Endorsed]: No. 2603. United States Circuit Court of Appeals for the Ninth Circuit. Pacific Power Company, a Corporation, Plaintiff in Error, vs. P. R. Sheaff, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Nevada.

Filed April 30, 1915.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.

---

*In the United States Circuit Court of Appeals, in  
and for the Ninth Circuit.*

PACIFIC POWER COMPANY, a Corporation,  
Plaintiff in Error,

vs.

P. R. SHEAFF,

Defendant in Error.

**Order [Granting Plaintiff in Error to May 10, 1915,  
to File Record in Appellate Court.]**

Upon motion of plaintiff in error in the above-entitled action, and good cause appearing therefor,—

IT IS HEREBY ORDERED that the plaintiff in error may have and it is hereby granted ten (10) days' additional time from the 30th day of April, 1915, within which to file in this court the transcript of the record of the United States District Court for the State of Nevada in the said action upon the writ

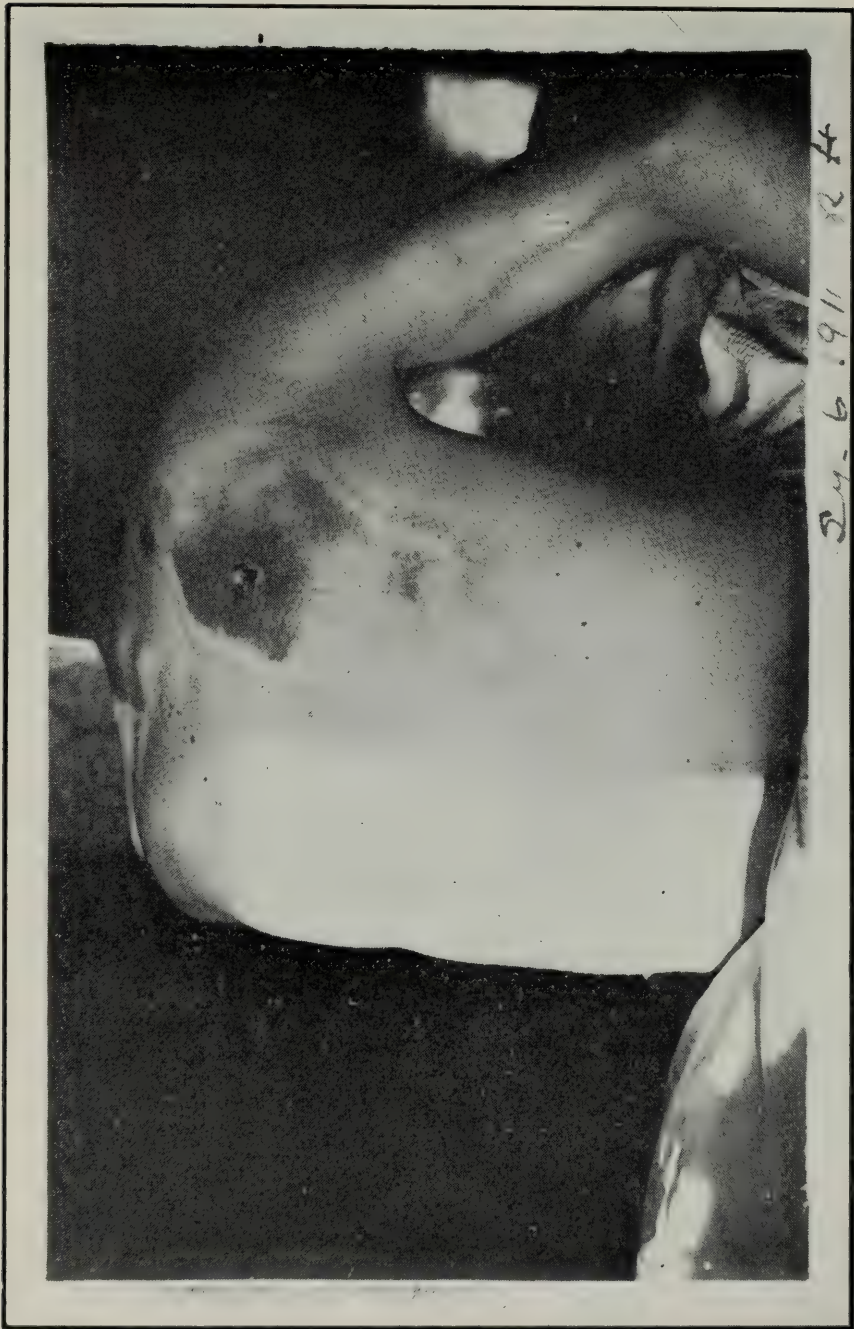
of error heretofore issued therein.

Dated, April 29, 1915.

WM. W. MORROW,  
Judge.

[Endorsed]: No. 2603. United States Circuit Court of Appeals in and for the Ninth Circuit. Pacific Power Company, a Corporation, Plaintiff in Error, vs. P. R. Sheaff, Defendant in Error. Order. Filed Apr. 30, 1915. F. D. Monckton, Clerk.



**Plaintiff's Exhibit No. 4.**

[Endorsed]: No. 1571. U. S. Dist. Court, Dist. Nevada. P. R. Sheaff vs. Pacific Power Co. Plffs. Exhibit No. 4. Filed Decr. 16, 1913. T. J. Edwards, Clerk.

No. 2603. United States Circuit Court of Appeals for the Ninth Circuit. Filed Apr. 30, 1915. F. D. Monckton, Clerk.

**Plaintiff's Exhibit No. 5.**



[Endorsed]: No. 1571. U. S. Dist. Court, Dist. Nevada. P. R. Sheaff vs. Pacific Power Co. Plffs. Exhibit No. 5. Filed Decr. 16, 1913. T. J. Edwards, Clerk.

No. 2603. United States Circuit Court of Appeals for the Ninth Circuit. Filed Apr. 30, 1915. F. D. Monckton, Clerk.



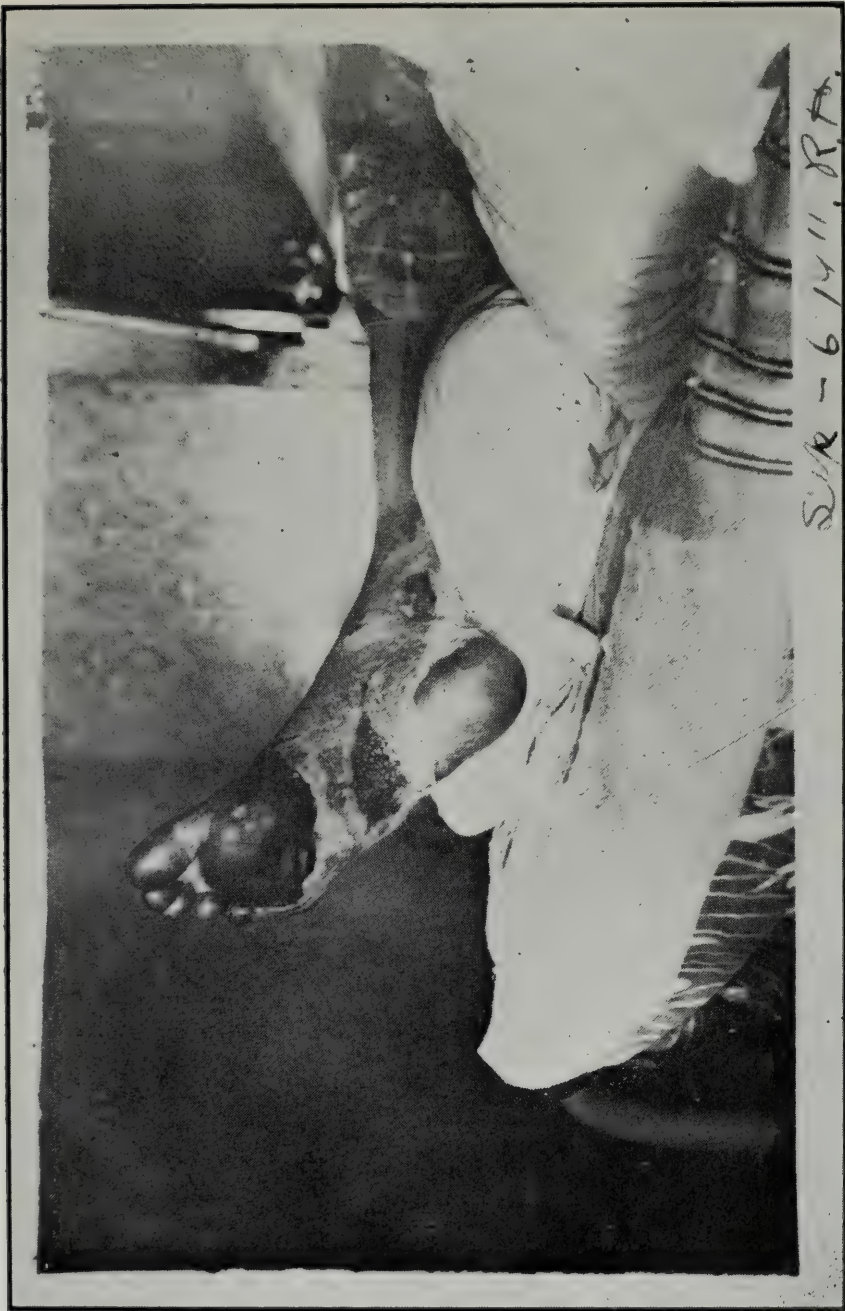
*Pacific Power Company*  
**Plaintiff's Exhibit No. 6.**



[Endorsed]: No. 1571. U. S. Dist. Court, Dist. Nevada. P. R. Sheaff vs. Pacific Power Co. Plffs. Exhibit No. 6. Filed Decr. 16, 1913. T. J. Edwards, Clerk.

No. 2603. United States Circuit Court of Appeals for the Ninth Circuit. Filed Apr. 30, 1915. F. D. Monckton, Clerk.

**Plaintiff's Exhibit No. 7.**



[Endorsed]: No. 1571. U. S. Dist. Court, Dist. Nevada. P. R. Sheaff vs. Pacific Power Co. Plffs. Ex. No. 7. Filed Decr. 16, 1913. T. J. Edwards, Clerk.

No. 2603. United States Circuit Court of Appeals for the Ninth Circuit. Filed Apr. 30, 1915. F. D. Monckton, Clerk.



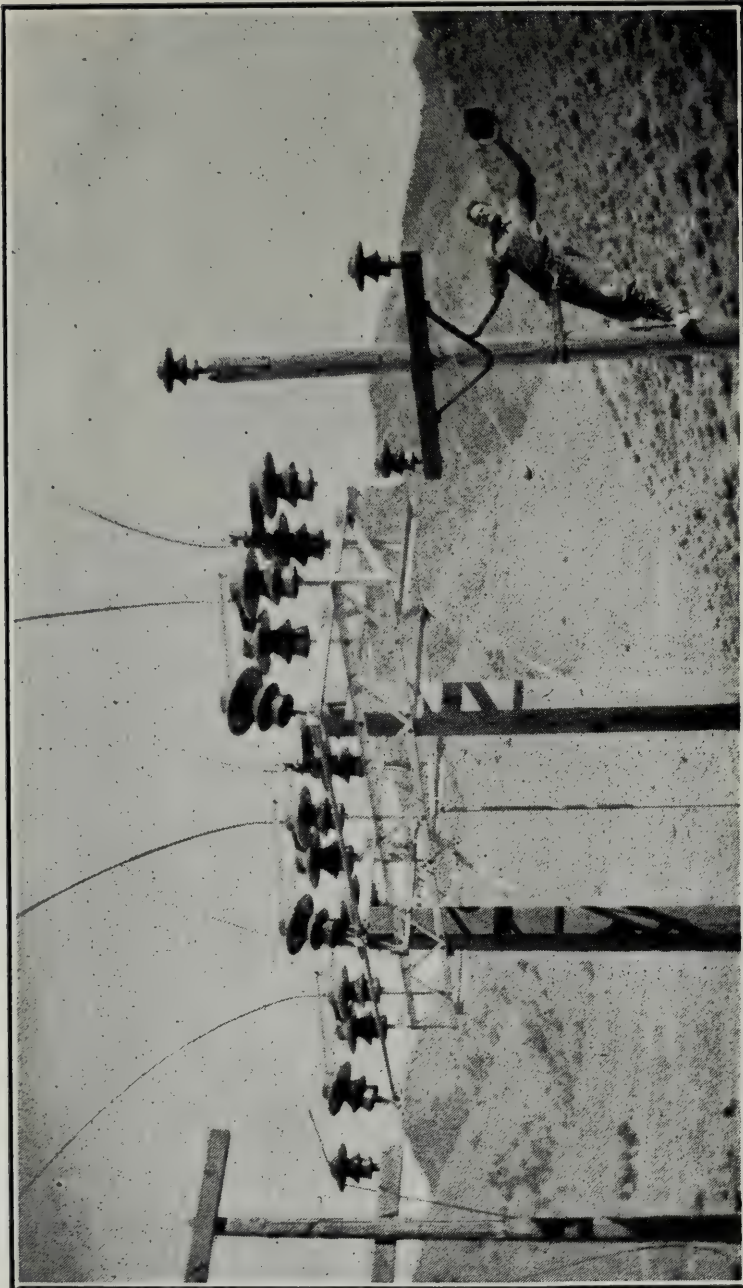
*Pacific Power Company*  
**Plaintiff's Exhibit No. 8.**



[Endorsed]: No. 1571. U. S. Dist. Court, Dist. Nevada. P. R. Sheaff vs. Pacific Power Co. Plffs. Ex. No. 8. Filed Decr. 16, 1913. T. J. Edwards, Clerk.

No. 2603. United States Circuit Court of Appeals for the Ninth Circuit. Filed Apr. 30, 1915. F. D. Monckton, Clerk.

**Defendant's Exhibit "H."**



[Endorsed]: No. 1571. U. S. Dist. Court, Dist. Nevada. P. R. Sheaff vs. Pacific Power Co. Defts. Exhibit "H." Filed Decr. 12, 1913. T. J. Edwards, Clerk.

No. 2603. United States Circuit Court of Appeals for the Ninth Circuit. Filed Apr. 30, 1915. F. D. Monckton, Clerk.



**[Defendant's Exhibit "J"—Letter, Oct. 9, 1911,  
Sheaff to Chatfield.]**

[Letterhead of Grand Hotel.]

Fallon, Nevada, Oct. 9, 1911.

Mr. W. N. Chatfield,  
Bodie, Cal.

Dear Mr. Chatfield:

Just a line to let you know I'm getting on favorably. Everything is about the same here, excepting the weather, and it's fine and warm.

Hope you are enjoying the cool weather in Bodie, as I've no doubt it's cool there.

Mr. Justice says to tell you he is still alive, and feeling fine.

Please give my best regards to George Johnson and Mr. Greenleaf, also Sam Westhorpe.

With best wishes,

I remain, yours sincerely,

P. R. SHEAFF.

[Endorsed]: No. 1671. U. S. Dist. Court, Dist. Nevada. P. R. Sheaff vs. Pacific Power Co. Plffs. Letter to Chatfield. Oct. 9/11. Defts. Exhibit "J." Filed Decr. 12, 1913. T. J. Edwards, Clerk.

No. 2603. United States Circuit Court of Appeals for the Ninth Circuit. Filed Apr. 30, 1915. F. D. Monckton, Clerk.

[Defendant's Exhibit "N"—Letter, Jan. 16, 1912,  
Sheaff to Pac. Power Co.]

[Letterhead of Grand Hotel.]

Fallon, Nevada, Jan. 16, 1912.

Pacific Power Co.,

Bodie, Cal.

Dear Mr. Chatfield:

Yours of Jan. 14, with check for Mr. Osborn enclosed, came to-day.

Thanks for sending it over. Sorry to hear of the shortage of water, as it will not only be a detriment to you, but to several mining camps.

I am about the same, have just been up town, and it's fine and warm.

Sincerely yours,

P. R. SHEAFF.

[Endorsed]: No. 1571. U. S. Dist. Court, Dist. Nevada. P. R. Sheaff vs. Pacific Power Co. Letter—Plff. to Deft. Jany. 16/12. Defts. Exhibit "N." Filed Decr. 12, 1913. T. J. Edwards, Clerk.

No. 2603. United States Circuit Court of Appeals for the Ninth Circuit. Filed Apr. 30, 1915. F. D. Monckton, Clerk.





No. 2603

3

IN THE

# United States Circuit Court of Appeals

For the Ninth Circuit

PACIFIC POWER COMPANY

(a corporation),

*Plaintiff in Error,*

VS.

P. R. SHEAFF,

*Defendant in Error.*

UPON WRIT OF ERROR TO THE UNITED STATES DISTRICT  
COURT OF THE STATE OF NEVADA.

BRIEF FOR PLAINTIFF IN ERROR.

METSON, DREW & MCKENZIE,

WM. M. ABBOTT,

AND

WM. M. CANNON,

GEO. A. BARTLETT,

*Attorneys for Plaintiff in Error.*

**Filed**

**SEP 27 1915**

**F. D. Monckton,**

*Filed this.....day of September, 1915.*

*FRANK D. MONCKTON, Clerk.*

*By.....Deputy Clerk.*





No. 2603

IN THE

# United States Circuit Court of Appeals

For the Ninth Circuit

---

PACIFIC POWER COMPANY (a corporation),  vs.  P. R. SHEAFF,	<i>Plaintiff in Error,</i>    <i>Defendant in Error.</i>
---	--

---

UPON WRIT OF ERROR TO THE UNITED STATES DISTRICT  
COURT OF THE STATE OF NEVADA.

---

## BRIEF FOR PLAINTIFF IN ERROR.

---

This action was brought to recover damages for personal injuries. The defendant in error obtained a verdict and judgment in the United States District Court for the State of Nevada for the sum of \$15,000.00. A motion for new trial was made and denied. The case is now in this court on writ of error.

---

### Statement of Facts.

Prior to the 18th day of July, 1911, the plaintiff in error, a California corporation, was con-



structing and operating a plant for the generation and transmission of electricity for purposes of light and power. The plant was at Bodie, California, and the Company's high tension wires ran to different points in the State of Nevada. During the early part of the year 1911, it had constructed a line to the town of Wonder. This consisted of three parallel wires strung upon poles, and was called the main line. From this main line a branch line, consisting also of three parallel wires, was constructed to a point near the town of Fairview. A substation was constructed at Wonder in which the high voltage current was transformed by means of transformers to a lower voltage for use as power by mines in that vicinity. Another substation was constructed at Fairview, about sixteen miles from Wonder, for the same purpose.

The defendant in error, hereinafter referred to as "Sheaff") was injured on the 18th day of July, 1911. He had been in the employ of the plaintiff in error (hereinafter called "the Company") since April of the same year. Prior to that time he had been in the employ of a contractor who had done part of the construction work for the Company. During the time Sheaff was employed directly by the Company the work was practically completed and Sheaff and his immediate superior or "boss" intended to leave on the day following the date of the accident.

The substations at Wonder and Fairview were built of corrugated iron and the transformers were

housed therein. A lightning-arrester was also built at each substation. The purpose of the lightning-arrester was to take care of and render innocuous any surges of electricity on the high tension wires that might occur by reason of lightning, electrical storms, or other causes. If extremely heavy surges should occur on the wires there was danger of great injury to the transformers and to the power system generally. But the lightning-arrester operated to divert the supercharge and carry it to the ground, thus preventing its passage into and through the transformers where the greater part of the damage could be done.

The details of construction of the lightning-arresters can best be understood by reference to the model which was introduced in evidence, and which has been transmitted to this court. Suffice it to say here that it was of the horn-gap type—a standard form of lightning-arrester. It had so-called “live” arms, situated on one side of a framework and connected with the high tension wires above, and “dead” arms, situated on the other side and connected with the ground by means of ground wires. One side of the lightning-arrester—that on which the live arms were situated—was extremely dangerous. The other side—where the dead arms were—was safe except in the case of a surge which was heavy enough to cause the current to jump from the live to the dead side, a distance of  $4\frac{1}{2}$  inches at the nearest point.



The lightning-arrester was within an enclosure surrounded by a wire fence, the substation building forming one side of the enclosure. A danger sign reading "DANGER—HIGH VOLTAGE—KEEP OUT", was placed upon the south side of a switch pole near the lightning-arrester facing the trail leading up the hill on the top of which the substation was built (fols. 189, 190, 193, op. 337; fol. 379, p. 414; fol. 479, p. 451).

Mr. Halpenny, who was in charge of the construction work, was not satisfied with the ground wires attached to the dead arms of the lightning-arrester. He desired to place concrete blocks under the ends of the dead arms and attach the wires thereto in such manner that any surge, after jumping the gap, would have to pass through the concrete blocks to the ground, thus forming a resistance which would aid in destroying the arc formed by the surge on the wires, and in causing the current to resume its normal flow.

A similar change had been made in the lightning-arrester at Wonder. Sheaff had made the concrete blocks for the Wonder arrester and had assisted in installing them under the directions of Halpenny. This work had been done about a week before the accident and Sheaff was thoroughly familiar with it.

Accordingly, Halpenny sent Sheaff to Fairview on the morning of the accident with instructions to dig holes under the dead arms of the lightning-

arrester and place the concrete blocks therein. He was also to get certain clamps, previously ordered by telephone, which were to be attached to the concrete blocks. He admits that he was given no instructions to touch or interfere with the wiring already there or to do any new wiring.

The clamps, as it happened, were not ready so Sheaff's work was confined to digging the holes under the dead arms. The concrete blocks could not be installed until the clamps had been placed thereon and adjusted. The only thing Sheaff could do, therefore, in carrying out his instructions, was to dig the holes.

On the morning of the accident he obtained the key to the substation and entered it to get a pick and shovel. On the door of the substation was a danger sign. While there Sheaff heard the purring of the transformers which indicated that the current was passing through them and to the mine beyond. He knew and recognized this peculiar sound. Upon obtaining the pick and shovel he went to the rear of the substation where the lightning-arrester was situated, took down the wires on the south side of the enclosure by removing the staples and entered the enclosure. He went directly toward the dead side of the lightning-arrester, which was about four feet from the live side. He dug the three holes, one under each of the dead arms. The last of the three holes took him to the northerly side of the lightning-arrester. After finishing them



he threw down his shovel with the intention of leaving the enclosure by going between the substation building and the live arms of the lightning-arrester, a space of several feet. Between the northerly side of the lightning-arrester and the wire fence there was plenty of room to move about without going near the live arms of the lightning-arrester. These live arms were in plain view, as were also their connections with the high tension wires above. Sheaff could have left the enclosure by the same route he had entered it, in which event he would not have been near the live arms. Instead of doing so he "wandered" toward the substation "without thinking". When, according to his testimony, he was near some part of the northerly live arm he lost consciousness and later found himself lying upon the ground near the northerly arm. Upon the tip of the northerly arm was found a small nub or "teat" indicating that an arc had been formed at that point. Sheaff's shoulders, back and feet were fearfully burned, the current evidently passing through his body to the ground.

It was shown that electricity of the voltage then being carried on the wires would not, under the most favorable conditions, jump more than one and three-quarters inches. There was no evidence to show whether Sheaff actually came into contact with the live arm or whether the electricity jumped to his body. If it did jump he must have been within less than an inch and three-quarters

of the live arm when it did so. The evidence is to the effect that the mark on the tip of the northerly arm could have been caused *either* by contact or by the arc formed when the current jumped the intervening space.

Sheaff makes the claim that the Company was negligent in ordering plaintiff to do the particular work assigned to him under the circumstances then existing. In order to determine this question it will be necessary to relate, in some detail, the previous experience of Sheaff, the circumstances surrounding his employment by the Company, and his experience with the Company prior to the accident.

These circumstances, and Sheaff's experience, *as related by himself*, are as follows:

At the time of the accident he was 26 years of age. He was born in England and came to this country in 1902. After spending some years in Canada he returned to this country in 1907. He had been in Alaska, New Zealand, Australia, and had touched at the South Sea Islands. He was a steam stationary engineer. His education was received in England. He graduated from the Grammar School and was about four months in High School, leaving school at the age of 12 years and four months. At that time he had never received any instruction in electricity (record fols. 2, 3).

When he was seven years of age his parents moved to the City of Canterbury, which had a popu-



lation of about 30,000. He lived there about ten years and left at the age of seventeen (fol. 78). After leaving Canterbury he went to British Columbia, where he obtained work firing a steam boiler (fol. 80). He had probably heard something of the use of electricity before he was seventeen years of age (fol. 81). Street cars were being operated by electricity in Vancouver when he first went there (fol. 82). He was two or three months about a steam engine before being permitted to run it (fol. 83). After running it for some little time he was left in charge of the engine and for a time had actual charge of it (fol. 84). All his experience about a steam engine only occupied something like two months and he was put in charge of it (fol. 85).

His next experience with steam engines was in 1906, at Millers, Nevada. Prior to going to Nevada he went to Australia and New Zealand in steamships and upon returning spent some time in San Francisco and Oakland, where trolley cars were run by electricity (fols. 85-87). Even in 1904 he knew they had electric lights and that they ran street cars and other things by electricity (fol. 88).

When a boy about sixteen or seventeen years of age he first had his attention attracted to the fact that electricity would give one a shock if one happened to get close to it or in contact with it. That was before he left Canterbury. He was at a country fair and you paid a fellow a small fee if you got a shock. He was told it was electricity he was using. He took hold of some handles and made a

connection and received a shock through his system, and from that time on he knew that electricity would do that sort of thing (fol. 90).

He learned his trade as an engineer of steam engines in British Columbia, after which he had more experience at Millers, Nevada, and Sabrina Lake, California. At Millers the plant was called the Tonopah Mining Company's plant. He was employed at the Esmeralda Power Company's plant in 1906, when he came back from New Zealand. In 1906 he was working on a boiler on a steamship running between Victoria, British Columbia, and Skagway, Alaska. That steamship was electrically lighted (fols. 91, 92). He didn't have anything to do with the electric generators or motors on that ship. There was only one of them and he knew the office of it. He knew that the generator was a mechanical appliance by which the electricity used on the ship was generated. He learned the name of it and knew that it was a generator at that time. They had a dynamo. He has learned since that a dynamo and generator are practically the same thing (fol. 93).

When he stated to the jury that his trade was that of a stationary engineer he based that on the experience he had detailed and such additional experience as he received at Esmeralda Power Company (fol. 94). He was first employed there as an oiler for about six weeks or two months; then as a fireman. He worked there during parts of 1906 and 1907 (fols. 94-95).



At first there were three engines in that power plant, and then they put in the fourth, and each one of those engines was connected with the generator, and the office of that generator was to generate electricity to use for power and light. That power plant distributed electricity in Tonopah and Millers. He knew that the juice went over the wires. His duty in or about the generators as an oiler was only to wipe them. There was a switch board in that plant made up of different sections (fols. 97, 98). There were a good many switches on it. The office of the switch was to cut off or turn on the electricity. During the time he was working in that plant as foreman or oiler, or both, he observed that switch being operated (fol. 99). There was a kind of slot where the switch went in and he supposed that where that switch went into the slot the *contact* was made which allowed the current to flow through. That was what he understood at that time (fol. 100).

While he was working in that power plant and around those generators, and oiling them, he didn't know anything of the destructive power of electricity. Possibly he knew then that electricity could kill. He didn't remember whether he had or had not heard of people being killed by strokes of lightning. He supposed he had, though. He knew that in the State of New York criminals were executed by means of electricity. He didn't know whether he knew that then or not, but wouldn't say that he did not. During his lifetime he has kept his eyes pretty well open about things that were going on

about him (fols. 105, 106). He knew that there was such a thing as a cold wire—a dead wire—and he knew that there was such a thing as a live wire. He knew that a live wire was one carrying a current of electricity, and a dead wire was one not carrying a current of electricity (fol. 108). He knew there was electricity going through the lines to Tonopah, and knew it was being generated in large quantities for power and light. He also worked for the Desert Power & Mill Company in 1908, 1909, and part of 1910. It was part of the old Esmeralda Power plant. He worked there as *foreman* in the power house (fols. 109-110). While working there he was brought into connection with electric generators or motors. They had two or three motors that ran pumps there. The motor is an electric business that runs by electricity and has a pulley on it and turns machinery. They had three of those motors at that plant that were operating while he was there. He operated those three motors during that time, about a year and a half altogether. He was pumping water with them. They were operated by throwing a lever. The lever was to stop and start the motors by throwing on or cutting off the electricity (fols. 111-112). He knew that electricity was being used as the power to operate those motors and that the current of electricity was turning those motors or making them work (fol. 112). He was accustomed to go about the motors. He worked the motors and at the same time did work as a fireman. He didn't know whether he touched the wires carrying elec-



tricity into those motors or not during the year he was operating the motors. Supposed he knew enough not to touch them at that time, and that he did know enough to keep away from a live electric wire that was carrying power enough to run a motor (fols. 114, 115). He knew that the electricity used to operate the motors came from some power house at some distance where it was being generated (fol. 116). Up to that time he had worked both in the power house where electricity was being generated and at the other end of the line where it was used in the motor. He had worked at both ends of the line (fol. 117). While running those electric motors he was receiving a salary of \$135.00 a month (fol. 117).

There were some steam pumps there too. He ran the steam pumps during the same time off and on for a period of about a year. He ran everything there was to run in the building except the engines for generating steam for the steam pumps (fol. 119).

In the Desert Power & Mill Company he was running the boilers, firing the boilers, running the motors, and running the steam pumps all at the same time. He was in charge of everything in that building and assumed the charge of everything for about a year, at \$135.00 a month (fol. 120).

While working at Lake Sabrina they had electric motors. They installed an electric motor when he was there. He tried to operate it across a canyon on a wire but could not make it work. It didn't

give satisfaction. He was assigned the duty of running it at that time (fols. 124-126). At that place he also ran a little steam hoisting engine (fol. 129).

In 1908 they had a little steam engine that ran a generator to operate a motor or crane (fol. 130).

He was employed by the Pacific Power Company about April, 1911. His first work was carrying a lot of crates with insulators in them and painting letters on them (fol. 132). The insulators were like those on the model, only larger. They were to go on the poles to lay the wires on. They were called insulators because they insulated. The object was to insulate the power from the poles to keep the electricity from escaping. He knew they were insulators at that time and that was the object and purpose of them (fols. 133, 134). He had seen the same thing a couple of months before that (fol. 135).

The first work assigned him was to dig some holes. He presumed that his duties were whatever he was told to do (fol. 135). He was running a power line from the main line to the Pacific Power Company substation at Fairview (fol. 139). He ran the telephone wire at the same time. He did not help dig all of the holes; he helped lay the wires and placed the insulators on the poles (fol. 140). He assisted in laying the wire upon the insulators—had been instructed to do that work by Mr. Johnson, who described it and told him how to do it (fol. 140). He had difficulty in carrying out his instructions at first, but learned (fol. 140). He assisted in laying the wire during the whole length of two miles and



was there while the connections were being made with the main power line (fol. 141). He was sure of their being connected up and the power being turned on. The first time the power was turned on was about two months before the accident. That power was to be carried over that line into the substation for use by the Nevada Mining Company. So far as he knew they were running all their mechanical appliances there by electricity which they were receiving from the Pacific Power Company's substation at Fairview—the same substation to which he had built the connecting line (fols. 142, 143). He helped to construct the power line and to place the wires that were carried into the Fairview substation (fol. 145). The process would be for the power to be carried along each of those three wires through the wire running along the top of the model and into the substation. The purpose of the substation was for distributing power. There were three transformers there in that station (fol. 146).

When he finished building the line into the Fairview substation he went to work at the Fairview substation itself assisting Mr. Halpenny in placing the transformers (fol. 147). He knew that electricity was carried into the transformers, and he knew the wires went out over to the other company's substation (fol. 148).

After completing the work of installing the transformers he went to Wonder with Mr. Halpenny. At Wonder the work was about the same nature as in Fairview (fol. 149). The Wonder substation had just

been built. The line was then built from the main power line into the Wonder station. That was the end of the line and the substation was just being completed. That substation was supplying the mine and the mill in Wonder and the electricity that came through the substation did not go to any other substation before being used (fol. 150). At Wonder the first work was moving around and placing the transformers, and then he helped Mr. Halpenny build the lightning-arrester at Wonder (fol. 151). The power must have been turned into that substation at Wonder before the transformers were installed. The power was turned into the Wonder substation pretty soon after he went there (fol. 151). It was turned on to the wires that were carried into the Wonder substation in some fashion similar to the way it was carried into the Fairview station (fol. 152). After assisting in installing the transformers at Wonder he went to Fairview and worked on the lightning-arrester there (fol. 153). After that he was in charge of the construction of a line from the Wonder substation to the mine. This work was done under his direction (fol. 153). He did some work on the lightning-arrester at Fairview and gives a description of the wiring connected therewith (fols. 155-158).

After assisting with the lightning-arrester at Fairview he went to Wonder to help put up a lightning-arrester there (fol. 163). Then he built the line from the Wonder substation to the Wonder Mining Company's mine. He directed putting up



the poles and personally laid the wires on that line from the Wonder substation to the mine. He placed the insulators and attached the wires to the insulators (fol. 163).

The lightning-arrester at Wonder was placed differently from that at Fairview. There were pipes on it. The pipes carried down from the power wire making a turn over an insulator and then breaking off was the same construction at Wonder as at Fairview. They had on the opposite side these dead wires running from nowhere and running down this arm and turned pretty close to the pipe connected with the power wire—that was the only similarity between the two. He thought it had practically, although differently placed, the same sets of wires as the one at Fairview (fol. 165).

Before leaving Fairview he thought those pipes were put there—that they were running from the lightning-arrester up to the insulator, and at any rate up near the power line (fol. 166). He thought the opposite wires, those without connections, had been put up at that time in Fairview, and so far as he knew, the lightning-arrester at Fairview was complete when he left there to go to Wonder (fol. 166).

He was frequently in the substation at Wonder while it was in operation, while the power was passing through it (fol. 170). He assisted with the work down in the Wonder substation, drying out the transformers by electricity (fol. 170). The electri-

city was used for the purpose of creating heat in the transformers (fol. 172). He took a shift by himself on that work (fol. 173). He knew how to turn on and turn off electricity by means of that switch and he knew the purpose of changing the switch (fol. 174). He presumed he kept himself from contact with exposed electric wires during the time he was doing that work (fol. 175).

“Mr. CANNON. Q. You were careful, in other words, to keep your hands and your person away from those live wires, weren't you?

A. Well, I don't think there was any necessity of getting near them.

Q. At any rate, you didn't make any effort to get in contact with any of those live wires, did you?

A. I don't think so.

Q. In other words, you knew enough about electricity at that time not to get into contact with a live wire, didn't you?

A. Yes.”

He had been in substations while transformers were working and knew they made some kind of a noise, a kind of hum. Inside the transformer station it is a sound that can be readily detected by any one who has heard it before (fol. 176). The sound is a kind of a purr. Prior to his accident he had heard that purring sound in Fairview that morning when he went in there to get a pick and shovel (fol. 177).

Before going to Fairview on the morning of the accident he did not see Mr. Halpenny. He saw him the night before at Wonder. Halpenny told him to



go over there and get some clamps made and to dig some holes and put these blocks in *and he would be over and finish up the job*. Those clamps had been ordered before he went over (fols. 178, 179).

Mr. Halpenny told him to go over there and get some clamps made and dig these holes under these arms, the arms closest to the switch, he said, and dig the holes and put these blocks in, *and he would be over there to finish up* (fol. 180). Halpenny told him to dig the holes on the side of the lightning-arrester closest to the switch, and the switch would be on the side farthest away from the substation. He told him to dig holes underneath those rods—those pipes—underneath those curved pipes and put those concrete blocks in the holes and the clamps on the concrete blocks. He did not tell him not to touch the wiring in any way, only that he would be over the next morning, or the next day, to finish the work himself. He told him to do nothing more, that he would be over and finish it. Those instructions were the only instructions he was given as to any work he was to do. His work consisted in directions to dig those holes at the place indicated, insert concrete blocks and fasten the clamps to the concrete blocks; as far as Halpenny told him, that was all he was to do. He received no directions to do any other work on that day. Halpenny told him that he would be over to finish up the work (fols. 181-183):

“Q. The point where the pipes which are not connected with the feed-wires above—the

point where those three pipes were connected to the lightning-arrester, and to the framework near it, was in plain view, was it not, from the lightning-arrester, and from practically all points surrounding the lightning-arrester?

A. Well, they would be, if you looked up to them you could see them'' (fols. 185, 186).

To a person standing anywhere in the neighborhood of the lightning-arrester, there was nothing to prevent him from seeing, if he had looked, how these connections and attachments of all these pipes and wires were made. He did not think there was any obstruction or impediment to his observation (fols. 187, 188).

He assisted in drying out the transformers at the Fairview station, taking his shift there the same as he did at Wonder (fol. 189). Before going and looking at the thermometers in the transformers he turned off the current *so he would not get burnt* (fol. 193). In going to the tank he came in close proximity to some of the live wires and knew then that the power was actually being used in the substation in some manner (fol. 195).

Sheaff worked for the Pacific Power Company as a laborer, electrician's helper and lineman at different times. As a laborer and electrician's helper he received four dollars per day, and while working as lineman received the ordinary pay of a lineman, namely, \$4.50 per day. His cancelled



checks show the character of his employment at different times (fols. 200, 218).

Sheaff did not think he would have put his hands deliberately upon a wire carrying a load of electricity (fol. 222). As to Sheaff's knowledge of electricity passing through transformers and the purr connected therewith, see folios 223-225.

At Wonder he painted a danger sign for the Wonder substation (fol. 230). He nailed that danger sign on the switch post at the substation (fol. 231). He didn't see any danger sign at the Fairview substation (fol. 232). He did not look for any (fol. 234).

As to Sheaff's version of the accident itself see folios 246-276.

Particular attention is called to folios 215 et seq., where Sheaff, referring to the work he was ordered to do on the day of the accident, said:

"I don't know how I happened to dig it underneath the point of the arm. Possibly he had told me to dig it under the point. As near as I can tell you he told me to dig those holes under the arms nearest the switch. I don't remember of his telling me to dig them under the point. I happened to dig them under the point because I presume that is where he wanted them. I guess it was because I knew of my own knowledge and experience where they ought to be dug. I had done that same work on the Wonder lightning-arrester and I had dug those holes on the Wonder lightning-arrester, and had assisted in placing the concrete blacks at the Wonder arrester. I guess that was how I came to know how to do that

kind of work. I had done that work at the Wonder substation under the direction and under the instructions of Mr. Halpenny, with Mr. Halpenny right there telling me how to do it. When I had finished that work at the Wonder substation I knew how to do that thing, and when I was instructed by Mr. Halpenny to go over there and do that work I knew how to do the work I was assigned to do. I knew where to place the holes."

Particular attention is also called to the following testimony given by Sheaff, as to facts transpiring immediately before the accident. He said (fols. 274 et seq.):

"Before starting for the point where I threw away the shovel, toward the building, I don't remember listening to hear the purr of the transformers. I did not look at the arm or arms nearest the building. I did not follow those arms, those pipes or arms, up to their connection with the power line above. I don't remember doing anything of that kind. My intention was to go around to the other side of the building. I don't remember listening for anything for the purpose of finding out whether there was power there or not. I threw my shovel away and went toward that building, *without thinking of the danger, or without thinking of any possibility of danger.*"

"MR. CANNON. Q. It is a fact then, isn't it, that you wandered over to that point without any thought on that subject at all? A. Yes."

Other testimony of Sheaff, showing his familiarity with electricity appears at folios 277-284. He also had experience in blasting with dynamite (fol. 283).



Lee Campbell, a witness for plaintiff, testified that he met Sheaff on the 14th of January, 1911; that he worked in the same construction crew with him constructing the line to Wonder; that subsequently he worked with him a few days at Fairview. In the construction of the line to Wonder he started digging holes and they were short a man in the wiring gang and witness requested the foreman to put Sheaff at that work (fols. 21, 22, page 271). Sheaff continued digging post holes just a few days. There were three separate gangs, one gang digging holes, one gang setting poles, and the wire gang. Sheaff, after being at work a few days digging post holes, was taken from that work and put into the wire gang (fol. 24, page 272).

There is a great deal more testimony as to Sheaff's experience. Mr. Halpenny testifies in great detail to a great deal of wiring work done by Sheaff, and to Sheaff's handling of live wires at different times. Mr. Greenleaf also testifies to Sheaff's working among the wires in the substation at Wonder while the transformers were being dried out. Some of the statements made by Mr. Halpenny, however, were denied by Sheaff, and we have therefore not inserted them in detail here, because our purpose is to present this case upon the uncontradicted testimony of Sheaff and his own witnesses. Sheaff's experience, as it has been hereinabove set forth, is gathered entirely from his own testimony with the exception of the work done by him in January and

February, 1911. His work at that time is detailed by the witness Campbell.

As will be shown hereafter, the complaint alleges that he was employed as a "laborer and electrician's helper". There is no evidence that when he was employed by the Pacific Power Company, or at any other time, he stated or in any manner intimated that he was not familiar with all of the duties of an electrician's helper. During the time he worked for the Pacific Power Company he showed himself to be in every way competent, and Mr. Halpenny, who gave him his orders, considered him a very competent man and very much above the average in intelligence and capacity. There is no evidence that Mr. Halpenny, or any employee of the company, ever knew or had any reason to believe that he was unfamiliar with the duties of an electrician's helper. On the contrary, he did the work of an electrician's helper satisfactorily to his employer and received pay as an electrician's helper. He also did satisfactory work as a lineman and received a lineman's pay therefor.

Therefore, on the day of the accident he must be treated, under the pleadings and evidence, as a thoroughly competent electrician's helper. As such Mr. Halpenny had the absolute right to assign him to the duty of digging the holes under the dead arms of the lightning-arrester, a perfectly simple and safe task. Mr. Halpenny had no cause or reason to believe that after digging the holes Sheaff would wander from a safe place into an extremely



dangerous place where his duties did not call him and thereby receive injuries.

The evidence does not show any duty on the part of the employer to warn or instruct Sheaff, and shows no knowledge on the part of the employer that Sheaff was ignorant of the dangers of his employment or required any warning or instruction. On the other hand, Sheaff's own testimony is to the effect that he was thoroughly familiar with the work assigned to him and knew how to do it because he had done the same character of work shortly before under the instructions of Mr. Halpenny.

---

### **Specifications of Error.**

The plaintiff in error relies upon and will urge as grounds for the reversal of the judgment of the District Court the following specifications of error, to wit:

#### **I.**

The District Court erred in denying the motion of plaintiff in error, made at the close of the case of defendant in error, for a peremptory instruction to the jury requiring and directing the jury to return a verdict for the defendant, said motion being made on the following grounds:

1. That the complaint fails to state a cause of action.
2. That the evidence fails to prove the material allegations of the complaint.

3. That the evidence fails to show that the lightning-arrester described in the complaint and in the evidence, was defective in the particulars alleged in the complaint, or any of them, or in any particular whatsoever, or defectively built or constructed, or maintained, or that plaintiff was injured by or through any such defect.

4. That the evidence fails to show that the defendant put the plaintiff at dangerous work, or that plaintiff was inexperienced in the work at which he was placed, or ignorant of the dangers thereof, or that defendant knew, or ought to have known, of plaintiff's ignorance, or inexperience, or that plaintiff was placed at any such work, without any or sufficient warning or instruction, or that plaintiff was injured by or through any of such matters and things.

5. The evidence fails to show that plaintiff's injuries were proximately caused by or through any defect or defects in the lightning-arrester, or in the construction or maintenance thereof.

6. The evidence fails to show that the plaintiff's injuries were proximately caused by any act or omission of the defendant in setting plaintiff at work, or directing the work at the time and place complained of, or in failing to warn him as to the dangers thereof, or in failing to instruct him as to his duties, or how to avoid the dangers thereof.

7. The evidence fails to show that plaintiff's injuries were proximately caused by the negligence alleged in the complaint, if any.



8. The evidence shows that the plaintiff's injuries were proximately caused by a separate, independent, intervening cause, for which plaintiff was alone responsible.

9. The evidence shows that the danger to which the plaintiff was exposed was incident to his employment, and that he assumed the risk of the same, and the responsibility thereof.

10. The evidence shows that the danger to which plaintiff was exposed was an open and obvious one; that he is presumed to have known and appreciated the same, and that he therefore assumed the risk thereof.

11. The evidence shows that the danger to which plaintiff was exposed was one which should have been observed and avoided by a person of plaintiff's experience, knowledge, intelligence and capacity, and that plaintiff therefore assumed the risk thereof.

12. That plaintiff was an experienced workman,, and that the dangers to which he was exposed in and about the place he was set at work, were such only as were incidental to his employment, and should have been observed and avoided by him, and that he assumed the risk thereof.

13. That the plaintiff did know and appreciate the dangers to which he was exposed, and that he therefore assumed the risk thereof.

14. That the plaintiff assumed the risk of the dangers to which he was exposed in this, to wit:

That upon completing his work of digging the holes in question, he voluntarily chose an unsafe, insecure and highly dangerous way to leave his place of work, and the enclosure surrounding the same, which way was known, or ought to have been known to him, to be dangerous, instead of a perfectly safe way, of which he fully knew.

15. That the evidence fails to show whether the plaintiff's injuries were caused by plaintiff's coming into actual contact with a live wire of the defendant, or by the electricity jumping from such live wire to plaintiff's body, while his body, or any part thereof, was within one and three-quarters or one and seven-eighths inches from such wire, or while plaintiff's body was within four and one-quarter or four and one-half inches from such live wire, or by coming into contact with or near the dead side of the lightning-arrester while it was carrying on overload or surge from any cause, or whether there was any overload or surge, or what was the cause of such overload or surge, if any, and that, therefore, negligence of the defendant is not proved, but is merely speculative, and the causal connection between the negligence alleged, if any, and the injury, is not proved but is merely speculative.

16. That the plaintiff's injuries were proximately caused by his own contributory negligence.

17. That the plaintiff's injuries were proximately contributed to by his own negligence.



18. That the plaintiff's injuries were proximately caused or contributed to by his failure to exercise ordinary care to avoid injury to himself, by his failing to heed the warning of danger given by the fence around the lightning-arrester, and by the danger signs upon the substation door and the switch-pole, both of which were, or could have been observed by him, by the exercise of ordinary care upon his part, and by his failure to use ordinary care to keep away from the live wires in the lightning-arrester, when he knew, or ought, in the exercise of reasonable care, to have known, by the purring of the transformers, and other facts and circumstances then known to him, that said wires were alive, and carrying a high voltage; and by his voluntary action in coming into close proximity, or in contact with said live wire, when he could have departed from said enclosure by another, and perfectly safe route then known to him, and by his failure in other respects to exercise the care imposed on him by law in view of his age, experience, intelligence, capacity and powers of observation.

19. That the accident to the plaintiff could not have been reasonably foreseen or anticipated by the defendant. (Record fols. 311 to 321, pages 384 to 388; Assignment of Error No. XXVIII, fols. 57 to 68, pages 62 to 66.)

## II.

The District Court erred in denying the motion of plaintiff in error, made at the close of the entire

testimony, for a peremptory instruction to the jury requiring the jury to return a verdict in favor of the defendant, said motion being made on each and all of the grounds set forth in the motion for a peremptory instruction made at the close of the case of defendant in error. (Record fols. 745 to 747, pages 552, 553; Assignment of Error No. L, fols. 94 to 97, pages 77, 78.)

### III.

The District Court erred in refusing to give to the jury as requested, and in modifying the following instruction (being numbered 3 of the instructions requested by plaintiff in error):

“You are instructed that the only cause of action, which the plaintiff is entitled to have submitted to you for consideration, is based upon the charge that the defendant sent the plaintiff to work at a place which was not reasonably safe in view of the unusual or extraordinary risks incident thereto, if any there were. You are, therefore, further instructed that if you find from the evidence that the place to which plaintiff was sent to work was a reasonably safe place, as that expression or term is hereinafter defined, your verdict must be in favor of the defendant, Pacific Power Company.” (Assignment of Error No. LI, fols. 97, 98, page 79; record fols. 808, 809, pages 576, 577.)

### IV.

The District Court erred in refusing to instruct the jury as requested by plaintiff in error in its certain requested instruction numbered 4A, reading as follows:



“The complaint does not allege that the plaintiff was unfamiliar with or ignorant of the ordinary duties of an electrician’s helper, and does not allege that the plaintiff was ignorant of the ordinary risks and dangers of his employment as an electrician’s helper. You are, therefore, instructed that it must be taken as an admitted fact in this case, so far as the charges of negligence against the defendant are concerned, that the plaintiff was familiar with the ordinary duties of an electrician’s helper and comprehended all of the usual and ordinary risks and dangers attending the said employment.” (Assignment of Error No. LII, fols. 99-101, pages 79, 80; record fols. 810, 811, pages 577, 578.)

## V.

The District Court erred in refusing to give requested instruction of plaintiff in error No. 4 B, reading as follows:

“The complaint does not allege that the plaintiff was unacquainted with or ignorant of all of the dangers incident to the work of a journeyman lineman and electrician, but does state that the plaintiff was unacquainted with and ignorant of the dangers incident to the work of a journeyman lineman and electrician upon and near wires or apparatus carrying electric current of high voltage and potential energy. You are instructed, therefore, that in so far as the charges of negligence against the defendant are concerned, it must be taken as an admitted fact in the case that the plaintiff was acquainted with and not ignorant of any of the dangers incident to the work of a journeyman lineman and electrician, excepting upon near wires or apparatus carrying electric current of high voltage and potential energy. As to all other matters relating to such duties and dangers he

must be deemed, in so far as negligence against the defendant is concerned, to have had knowledge of such dangers.” (Assignment of Error No. 53, fols. 102-104, pages 80, 81; record fols. 812, 813, page 578.)

## VI.

The District Court erred in refusing to give to the jury requested instruction of plaintiff in error No. 4 C, reading as follows:

“The complaint, as amended, charges as one of the alleged defects of the lightning-arrester that it was placed or constructed too close to the substation building. You are instructed that the evidence fails to sustain this charge, and you will, therefore, ignore it in arriving at your verdict.” (Assignment of Error No. 54, fol. 105, page 81; record fol. 814, page 579.)

## VII.

The District Court erred in refusing to instruct the jury as requested by plaintiff in error in its proposed instruction No. 5, reading as follows:

“Certain evidence has been admitted in this case with respect to the question as to whether or not the defendant warned the plaintiff as to the dangers attending the work, upon which he was engaged at the time of the accident, if any, and whether the defendant instructed him as to how to avoid such danger. In this connection you are instructed that the complaint does not set forth any cause of action against the defendant based upon any alleged failure of the defendant to give the plaintiff any such warning or instruction, and you cannot, therefore, find the defendant guilty of negligence on that ground.” (Assignment of Error No. 55, fol. 106, page 82; record fol. 815, page 579.)



## VIII.

The District Court erred in refusing to give, and in modifying instruction No. 5 B proposed by plaintiff in error, reading as follows:

“Although the place to which an employee is sent to work may be actually dangerous, it may, notwithstanding, be a reasonably safe place to work within the meaning of the law relating to the duty of an employer toward his employees. Some occupations are essentially dangerous, and some places where employees are obliged to work are essentially dangerous, but it does not follow that an employer is negligent in sending an employee to work in such dangerous place. Dangerous work, such as working about electricity, is lawful and must be done. Therefore, an employer has a right to set an employee at such work or to direct him to work in a dangerous place, and an adult employee, who accepts such work, takes upon himself the risk of the ordinary dangers incident thereto. The greater the risk and danger of the particular work or the particular place, the greater is the risk which the employee assumes. It is only concealed and latent dangers, or dangers of which he does not or should not know and appreciate the risk, for which the employee does not assume the responsibility. Therefore, if an employee is sent to work in a dangerous place, but the dangers, even though great, are open, plain and obvious and such as are or should be known to an adult person of ordinary intelligence and capacity, such place is under the law a reasonably safe place to work, and the employer is not responsible for any injury that may be sustained by the employee through or by reason of such dangers.”

The court gave, in substance, the greater part of the foregoing instruction but refused to give the part thereof reading as follows:

“If an employee is sent to work in a dangerous place, but the dangers, even though great, are open, plain and obvious and such as are or should be known to an adult person of ordinary intelligence and capacity, such place is under the law a reasonably safe place to work.”

With respect to this part of the instruction the District Court, in the presence of the jury, said:

“I cannot, as a matter of law, instruct the jury that a dangerous place, no matter how dangerous it is and how unnecessarily dangerous it is, is a safe place to work, if the servant knows and appreciates the danger.” (Assignment of Error No. 56, fol. 108, pages 82, 83, 84; record fol. 818, pages 580 to 584.)

## IX.

The District Court erred in refusing to give instruction No. 5 C requested by plaintiff in error, reading as follows:

“If you find that the defendant sent the plaintiff to work in a place which was actually dangerous, but the danger thereof was open and appreciated by him, I instruct you that the place to which he was sent was reasonably safe, and his employer cannot be held responsible for injuries suffered by him through or on account of such dangers.” (Assignment of Error No. 57, fol. 112, page 84; record fol. 826, page 584.)



## X.

The District Court erred in refusing to give to the jury instruction No. 15 requested by plaintiff in error, reading as follows:

“You are instructed that the danger attending the employment of the plaintiff at the time of his injury was open, patent and obvious and such as should have been known and appreciated by an adult person of ordinary intelligence, experience and capacity. This being so he assumed all the risks thereof, and your verdict must, therefore, be in favor of the defendant.” (Assignment of Error No. 58, fol. 114, page 85; record fol. 827, page 584.)

---

**Argument.**

I and II.

**THE DISTRICT COURT ERRED IN REFUSING TO DIRECT A VERDICT IN FAVOR OF PLAINTIFF IN ERROR.** (Assignments of Error Nos. XXVIII and L.)

This assignment of error is divided into two general propositions, viz.:

A. That the complaint fails to state a cause of action; and

B. That the evidence fails to prove the material allegations of the complaint.

These will be considered in their order.

A.

**THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION.**

There are two vital objections to the complaint, first, that no actionable negligence is alleged, and

second, that no causal connection is shown between the negligence attempted to be alleged and the injury.

It is alleged, in substance, that the plaintiff in error, a company furnishing electric current for light and power, had constructed, and on the 18th day of July, 1911, the date of the accident, maintained a lightning-arrester in a defective and dangerous condition, in this, that the wires, rods, arms and appliances carrying "electrical currents and energy of high and dangerous amount and voltage were not erected, built and maintained *at a safe and sufficient height and distance from the ground* but was built and maintained *too near the ground* and in *too close proximity* to the Nevada Hills station-house or transformer station;" that on said day "plaintiff herein was in the employ of the defendant as a *laborer and electrician's helper* and was unfamiliar with the work of a *journeyman lineman and electrician* and was unacquainted with and ignorant of the dangers incident to the work of a *journeyman lineman and electrician upon or near wires or apparatus* carrying electrical current of high voltage and potential energy and plaintiff was receiving from defendant only the wages of a laborer or *helper*;" that on said date, "plaintiff was ordered to work *in and around and near* said lightning-arrester and said Nevada Hills transformer house and substation; that said place was a dangerous place in which to work by reason of the defects alleged herein and *by reason of the fact that*



*the live arms of said lightning-arrester were so near the ground and in so close proximity to said sub-station building; that said dangers and dangerous condition were wholly unknown to plaintiff herein and plaintiff was ignorant of the same;" that plaintiff on said date, "while working near and around said lightning-arrester as ordered by defendant came either in such close proximity to or in contact with one of the said arms of said lightning-arrester; whereupon a large amount of electrical current, to wit, sixty thousand (60,000) volts, passed through the body of plaintiff to the ground, thereby inflicting upon plaintiff a violent electrical shock and severe and dangerous injuries;" that "by reason of said negligent and defective construction of said lightning-arrester and by reason of its construction and maintenance at an unsafe and insufficient distance from the ground and by reason of its nearness to said transformer-house and by reason of the dangerous place in which plaintiff was ordered to work and of receiving said shock and charge of electricity, plaintiff sustained a number of grievous injuries" etc.; that "by reason of the infliction of said physical injuries on plaintiff and by reason of the negligence, carelessness and wilful indifference of defendant as aforesaid, plaintiff has been damaged," etc.*

1. It will be observed that this complaint does not allege *inexperience* on the part of defendant in error. On the contrary, it alleges that he was employed as a laborer and *electrician's helper*. It

does not state that he was unfamiliar with the duties of a laborer or electrician's helper. The allegation is that he was unfamiliar with the work of a "journeyman lineman and electrician". Therefore it must be assumed (the complaint having been demurred to) that defendant in error was an experienced "laborer and electrician's helper".

2. It will next be observed that the complaint does allege that defendant in error was "unacquainted with and ignorant of the dangers incident to the work of a journeyman lineman and electrician" (not "electrician's helper"), and that said dangers and dangerous condition were wholly unknown to the plaintiff herein and plaintiff was ignorant of the same". In view of the fact that defendant in error was an *experienced* employee he must be assumed to know and appreciate the ordinary dangers incident to his employment. His ignorance of such dangers cannot assist his cause of action, at least until such ignorance is brought home to his employer. Neither can his ignorance of the dangers of *another and different* employment, viz., "journeyman lineman and electrician," help his case. Under such circumstances an employer is entitled to rely upon his employee's experience so far as the ordinary dangers incident to his employment are concerned, and also as to dangers which are open and obvious to any intelligent man.

3. It will be noticed also that the complaint fails to show that the employer *knew* of plaintiff's ignorance or inexperience (assuming him to be inexpe-



rienced). In actions of this character such an allegation is absolutely essential as will be shown by the authorities hereinafter cited.

4. There is no allegation that the employee was set to work without instruction or warning of the danger of his employment. This is also a necessary averment.

5. No *facts* are alleged showing a causal connection between the alleged negligence and the injury.

6. The complaint fails to show whether the accident happened because defendant in error came in "close proximity to" or "in contact with" one of the arms of the lightning-arrester. The allegation in this respect is in the disjunctive. Therefore the complaint does not show how the accident happened.

1, 2, 3 and 4. These matters all relate to the question as to whether actionable negligence is alleged or not. They will, therefore, be discussed together

The substantive allegation of the complaint is that the plaintiff was ordered to work "in and around and near" the lightning-arrester, and that this was "a dangerous place in which to work"; and that "while working *near and around* said lightning-arrester as ordered" the accident happened.

Of course working near and around live electric wires carrying electricity of high voltage is dangerous work. But such work must be done and men must do it. When an employer places a minor at

such work a different rule applies that when the employee is an adult; and when the employer places an inexperienced adult at such work a different rule applies than when the employee is experienced. In the case of an experienced employee there is no duty imposed upon the employer to give the employee instruction or warning as to the dangers of his employment. Even in the case of minors or inexperienced adults the employer is not bound to give warning or instruction unless he knows of the employee's minority or inexperience. If the employer knows of his employee's minority he may, in some cases, be charged with the duty of inquiring as to his experience. These are well known principles applicable to this subject, as the authorities hereinafter cited will demonstrate.

In this case the employee was an *experienced* man. He therefore must be assumed to have knowledge of the danger of working "near and around" live electric wires. If, although experienced, he is *actually ignorant* it cannot be assumed that the employer had knowledge of such ignorance, and no employer can be charged with knowledge of the ignorance of an experienced man. The case made by the complaint is one, therefore, where the employer, in the ordinary course, set an experienced man at dangerous work within the line of his duty. There is no allegation as to whether the employee was instructed as to how to avoid injury or warned of the danger of his employment. There was no obligation resting upon the employer to give such



warning or instruction. No case can be found holding that an employer, when setting an experienced man at dangerous work, is bound to warn him of the danger and instruct him how to avoid it. The duty of warning and instruction rests upon employers only in the case of minors and inexperienced adults. (Moreover, as the complaint is silent on the subject we are entitled to assume that the employee was actually warned and instructed.)

If we are correct in this statement of the law this complaint is clearly insufficient. It alleges, in substance, that an *electrician's helper* was ordered to work *near and around* electric wires. That would ordinarily be the place where an electrician's helper would work, and the first thing such an employee should learn is the danger of coming into contact with electric wires. What duty, therefore, does the complaint show devolved upon the employer with reference to that particular employee? It is submitted that it shows no duty other than to provide for *all* his employees a reasonably safe place to work.

What, under such circumstances, is a reasonably safe place to work? Working around live electric wires is always dangerous. Manifestly, therefore, no obligation rests upon an employer to furnish his experienced employee, whose duty it is to work near and around live electric wires, with a place to work which is *absolutely* safe. Such a thing is impossible. The most that an employer can do

under such circumstances is to use *ordinary care* in that regard. If through want of ordinary care an employer leaves some latent or hidden danger which would be likely to be overlooked by an experienced employee exercising ordinary care, the employer would have failed in his duty. On the other hand, where the danger is an open, obvious and patent one, observable alike by experienced and inexperienced men, no duty rests on the employer. Under such circumstances the burden rests upon the employee to avoid all such dangers.

There is no allegation in the complaint that the wires in question were hidden, or that the danger of coming in contact with them was not open, obvious and apparent to any person of ordinary capacity. It is not alleged that the danger was latent or undiscoverable by the exercise of ordinary care. From all that appears in the complaint the live wire was in plain sight of an experienced employee, and being so he voluntarily came in close proximity to or in contact with it and was injured.

How he happened to come into close proximity to or in contact with the wire is not shown by the complaint. Neither is it shown that any act on the part of the employer was responsible for his doing so. It is only alleged that "while working near and around said lightning-arrester as ordered by defendant" *he came* "either in such close proximity to or in contact with one of said arms of said lightning-arrester" that he received a charge of electric-



ity and was injured. How was it that “he came”? Where, in these allegations, is there any statement of a *duty violated* on the part of the employer? As already stated, in such cases it is necessary to aver (1) that the place must be dangerous, (2) the employee must be inexperienced and ignorant of the danger, (3) the employer must know of plaintiff’s ignorance and inexperience, and (4) the employee must be set at work without instruction or warning of the danger. If the complaint is insufficient with respect to any of these matters, it is obnoxious to a general demurrer.

*Whitten v. Nevada Power & Light Co.*, 132 Fed. 782. (Circuit Court, D. Nevada, September 24, 1904.)

In this action for wrongful death, the complaint alleged that defendant, an electric company, was engaged in supplying electricity for lighting purposes; that it engaged so to supply electricity to a named patron; that it was defendant’s duty to maintain a safe plant, machinery, poles, wires, lamps and other appliances for the distribution of electricity to said premises, to inspect the same from time to time, and at all times to keep the same in good repair and in safe condition; that it “negligently failed to discharge its said duties”, so that when plaintiff’s intestate, a workman employed in said residence, without negligence took into his hands an incandescent lamp for the purpose of inspecting his work, he received into his body a severe and

deadly charge of electricity whereby he was instantly killed "through the wrongful act, neglect and default of defendant as aforesaid". In sustaining a demurrer to the complaint District Judge Hawley held that the complaint was too general in its averment of defendant's duty and its breach, saying:

"It will be observed that the portion of the fifth paragraph of the complaint, which relates to the duty of the defendant in the several particulars therein named, does not contain any evidentiary or ultimate fact. Such averments are generally held to be wholly insufficient unless connected with a statement of the facts from which the law raises the duty. This general principle is too well settled to require extended discussion. 14 Ency. Pl. & Pr. 332, and authorities there cited. \* \* \* The most objectionable part of the complaint, viz., the 'lumping clause', setting out all the duties of the defendant without specifying any breach of duty, may be considered as mere surplusage, which would not call upon the defendant to specifically answer."

*O'Connor v. Atchison, T. & S. F. Ry. Co.*,  
137 Fed. 53, 504, 505.

This was an action for the death of a railroad section hand while unloading a dump car. The complaint alleged that the service in which deceased was killed was without the service he had contracted to render, and that he was ignorant of its dangers, but failed to allege that defendant or its roadmaster knew or should have known that deceased was inexperienced or of immature judg-



ment, or ignorant of the attendant dangers. The Circuit Court for the Northern District of Illinois sustained a general demurrer to the complaint whereupon the plaintiff, electing to stand upon the complaint, judgment was entered dismissing the suit. On appeal the Circuit Court of Appeals for the Seventh Circuit affirmed the judgment, the court saying:

“The declaration in each count, while averring that the service in which the deceased came to his death was without the service he had contracted to render, and while asserting that he was ignorant of the attendant danger of the service he was ordered to perform, and that the roadmaster knew of the danger but failed to advise the deceased thereof, nowhere asserts that the defendant in error or its roadmaster knew, or had reason to believe, or by the exercise of reasonable care and observation could have known, that the deceased was inexperienced or of immature judgment, or of tender years, or ignorant of the attendant danger of the service to which he was ordered. In dealing with the facts pleaded, we are compelled to assume that the deceased was a man of mature judgment, of ordinary intelligence, and acquainted with the workings of the laws of nature which are of common observation. Assuming, then, that the roadmaster was a vice principal; that the deceased was temporarily withdrawn from the service he had engaged to perform; that he was directed to enter upon another and more dangerous service, with the perils of which he was unacquainted (if we are permitted to assume that he was ignorant of the law of gravity)—the question arises whether the declaration is sufficient without an allegation that the railway company or its road-

master knew or had reasonable cause to believe that the deceased was ignorant of the dangers attendant upon the service to which he was ordered. This question is not a new one in this court. In *Reed v. Stockmeyer*, 74 Fed. 186, 20 C. C. A. 381, we held that the liability of a master in case of injury to his servant received in an employment, outside of that for which he had engaged arises, not from the direction of the master to the servant to depart from the one service and engage in the other and more dangerous work, but from failure to give proper warning of the attendant danger in cases where the danger is not obvious, or where the servant is of immature years, or unable to comprehend the danger. This principle is sustained by abundant authority. In addition to the cases considered in our decision, we need only refer to the cases of *Klochinski v. Shores Lumber Company*, 93 Wis. 417, 67 N. W. 934; *Murphy v. Rockwell Engineering Company* (N. J. Sup.) 57 Atl. 444; *Felton v. Girardy*, 104 Fed. 127, 43 C. C. A. 439; *Deisenritter v. Kraus-Merkel Malting Company*, 97 Wis. 279, 289, 72 N. W. 735; *Sladky v. Marinette Lumber Company*, 107 Wis. 250, 260, 83 N. W. 514; *Wagner v. The Plano Manufacturing Company*, 110 Wis. 48, 85 N. W. 643."

*Reed v. Stockmeyer*, 74 Fed. 186, 187, 188, 189, 190.

In this case it appeared that the plaintiff was employed in defendant's quarry as a scabbler, or preparer of the stone for hewing. He was acquainted with the operations of channeling stone and knew of the existence in the rock of seams which rendered the cuts of stone liable to break in the operation of channeling. Defendant's foreman directed



plaintiff to leave his work of scabbling, which was without risk, and assist in breaking out a cut of stone by the use of wedges. While plaintiff was below the cut of stone clearing the way for the use of a steam drill, a piece of stone split off and fell upon and injured plaintiff. It was held that there was no breach by defendant of any positive duty owing to the plaintiff which produced or contributed to his injury. In a very learned opinion the court said:

“It is the duty of the master to use ordinary care to furnish machinery and appliances reasonably safe and suitable for the use of the servant, such as with reasonable care upon the part of the servant can be used without danger except such as is incident to the business in which such instrumentalities are employed. So, also, is it the duty of the master to provide a reasonably safe place in which the servant may perform his work, and to keep it in such suitable condition. The duty is not absolute, but relative. It is measured by the nature and character of the employment, the location of the premises and their surroundings. *There are employments that of themselves are necessarily dangerous, in connection with which no position can be made secure.* In such case the law requires of the master that he shall use ordinary care that the dangers of the employment are not unnecessarily enlarged; that he shall take proper care to furnish such safeguards as are customarily employed in the performance of like hazardous service, so that the servant, exercising proper care, may render his service without exposure to dangers that are not within the obvious scope of the employment as usually

carried on. *Coombs v. Cordage Co.*, 102 Mass. 572; *Burke v. Anderson*, 34 U. S. App. 132, 16 C. C. A. 442, and 69 Fed. 814. The master may, however, conduct his business in the way that seems to him best, although other ways may be less hazardous. In such case, if the servant knows the danger attendant upon such manner of prosecuting the work, he assumes the risk of the more hazardous method. *Tuttle v. Railway Co.*, 122 U. S. 189, 7 Sup. Ct. 1166; *Southern Pac. Co. v. Seley*, 152 U. S. 145, 14 Sup. Ct. 530; *Naylor v. Railway Co.*, 53 Wis. 661, 11 N. W. 24; *Stephenson v. Duncan*, 73 Wis. 404, 41 N. W. 337; *Sweet v. Coal Co.*, 78 Wis. 127, 47 N. W. 182; *Casey v. Railway Co.*, 90 Wis. 113, 62 N. W. 624; *Sullivan v. Manufacturing Co.*, 113 Mass. 396; *Gilbert v. Guild*, 144 Mass. 601, 12 N. E. 368; *Crowley v. Pacific Mills*, 148 Mass. 228, 19 N. E. 344; *Coullard v. Tecumseh Mills*, 151 Mass. 85, 23 N. E. 731; *Railroad Co. v. Lyons*, 119 Pa. St. 324, 13 Atl. 205; *Anderson v. Lumber Co.*, 47 Minn. 128, 49 N. W. 664; *Michael v. Stanley*, 75 Md. 464, 23 Atl. 1094; *Rietman v. Stolte*, 120 Ind. 314, 22 N. E. 304. The servant, on his part, assumes the natural and ordinary risks attendant upon his employment. *He does not, however, assume unusual and extraordinary risks of which the master knew or should have known or foreseen, unless such risks are obvious, or the servant has actual or presumed knowledge of the danger. It is the duty of the servant to use ordinary care to ascertain the dangers attending the service in which he engages, and to protect himself against known dangers, and such as can by ordinary care be ascertained. This duty is as imperative upon him as is the duty laid upon the master.* *Wormell v. Railroad Co.*, 79 Me. 397, 10 Atl. 49. When the servant is required by the master



to perform temporary service beyond and without the scope of that which he has engaged to do, a question of somewhat different nature is presented. The master may not lawfully expose his servant to greater risks than those pertaining to the particular service for which he has engaged, and against which the servant, through want of skill, or by reason of tender age or physical inability, could not presumably defend himself, if unapprised of the danger. He is bound to warn the servant of the danger if it be not obvious, and to instruct him how it may be avoided. If, however, the servant be of mature years, and of ordinary intelligence and experience, he is presumed to know and comprehend obvious dangers. In such case the master is not liable for injury happening to the servant in the performance of dangerous work without the scope of his engagement for service, merely because he has been directed by the master to perform such work. If the servant is possessed of knowledge and experience sufficient to comprehend the danger, and without objection undertakes the service, the master is not liable for injury received by the servant in such new and more dangerous employment. *Cole v. Railway Co.*, 71 Wis. 114, 37 N. W. 84; *Paule v. Mining Co.*, 80 Wis. 350, 50 N. W. 189; *Dougherty v. Steel Co.*, 88 Wis. 343, 60 N. W. 274; *Buzzell v. Manufacturing Co.*, 48 Me. 113, 121 *The liability upon the master in cases of injury to the servant received in a dangerous employment outside of that for which he had engaged arises, therefore, not from the direction of the master to the servant to depart from the one service and to engage in the other and more dangerous work, but from failure to give proper warning of the attendant danger in cases where the danger is not obvious, or where the servant is of immature years, or unable to comprehend the danger''*

*Tennessee Coal etc. Co. v. Williamson*, 51 So. 144, 145.

This was an action by a servant to recover damages for personal injuries sustained by him. The complaint contained the following allegations: "The said Lewis Meyers ordered plaintiff to chain certain cobbles to a crane, and failed to warn plaintiff of the danger caused by the emission of sparks from the said hot steel rail, which was being sawed, as aforesaid, and as a proximate consequence thereof plaintiff was injured as aforesaid." A demurrer was interposed to this count, and overruled. On appeal the court reversed the judgment because the complaint did not state facts sufficient to constitute a cause of action, saying:

"It is earnestly insisted that this count is bad: (1) In that it fails to show a duty on the part of Myers to warn plaintiff; and (2) in that it fails to allege plaintiff's ignorance of the danger, or to show a duty to warn plaintiff. The negligence complained of consisted in this: That 'Myers ordered plaintiff', etc. The count fails to show any duty on the part of Myers to warn plaintiff, *in that it fails to aver that Myers knew of the danger, or that plaintiff was inexperienced or was in need of any warning, and was therefore subject to the demurrer interposed.*"

*Louisville etc. Co., v. Wilson*, 50 So. 188, 189.

In this action plaintiff, a minor employee of the defendant, was injured while operating a bolt-cutting machine in defendant's shops. The negligence attempted to be alleged was that defendant



“negligently failed to properly and sufficiently warn or instruct plaintiff of the danger to him in or about working at or with said machine.” Objection was taken to this count by demurrer in that it failed to aver that defendant knew of plaintiff’s youth and inexperience. The trial court overruled the demurrer and in reversing a judgment for the plaintiff because of this error the court, after an elaborate review of the authorities, State and Federal, said:

“In *Labatt on Master and Servant* it is said: ‘In cases where there is specific evidence tending to show that the master having knowledge of the servant’s inexperience employed him in hazardous work which required the exercise of peculiar skill, the failure to give adequate instructions may properly be found to be negligence. On the other hand, unless the defendant knew, or ought to have known, of some occasion for instruction, his omission to give it cannot be regarded as the proximate cause of an injury which the plaintiff received owing to the want of such instructions. The mere fact that he was injured because he was inexperienced and ignorant of the danger and hazard will not suffice to charge the defendant. The question whether the master at the time of engaging the servant or afterwards ought to have inquired whether he was experienced or not, or should have taken notice, under all the facts, of the probability that he was not, nothing being said on the subject by either party, is a question for the jury,’ 1 *Labatt*, 547, 548. The concluding sentence of the above excerpt from *Labatt* is quoted by appellee’s counsel, who thereupon argue as follows: ‘If it is a question for the jury to determine whether the

master ought to have known of the necessity of instructions, then it necessarily follows that plaintiff, especially a minor plaintiff, is not required to aver that the defendant did in fact know; for, if there was necessity to aver knowledge, then, plaintiff would have to prove it.' Of course, he would have to prove it. It is that (the knowledge of the servant's inexperience) upon which Labatt plants the duty to impart instruction; and certainly, without the existence of the duty, negligence is not predicable. As we apprehend the meaning of the sentence quoted and relied upon by appellee's counsel, it has naught to do with averment proper or necessary to show the duty of the master, but rather seems to be an effort to hold clear the distinction between the province of the court and that of the jury in respect to the weight to be given to the evidence. \* \* \*

*The part of the quotation from Labatt used by the appellee is perfectly consistent with what immediately precedes it, as set out above, of which former part we think the clear meaning is that averment of knowledge or of the existence of a state of facts from which knowledge would be inferred is necessary to show the duty of warning.* It must be borne in mind that the bone of contention here is not whether the master knew or should have known of the danger for of that the presumption is he had knowledge, but (underlying questions touching danger, and averment of negligence) is the question of duty. It is simply a question of averment necessary to show duty upon the breach of which when shown negligence may be predicable. Duty being shown—as we have stated above, and have frequently decided—general averments of negligence are sufficient. From what has preceded it is the judgment of the court that the court below committed reversible error in overruling the demurrer to



the second count, which presents lack of averment (in that count) of knowledge on the part of the master, or that of Madden, of plaintiff's inexperience."

*Chicago etc. Co. v. Hendrix*, 87 N. E. 663, 667.

This was a general action against a railroad company and a clay works company for damages for personal injuries sustained by plaintiff, a minor, who was injured while acting in the employ of the latter company. The negligence charged against the defending employer was that he had failed to warn the plaintiff. In reversing a judgment in plaintiff's favor because of the error of the trial court in overruling defendant's demurrer to the complaint, for failure to allege that the employer was ignorant of the inexperience of the plaintiff, the court said:

"Among the objections made to the complaint by appellant clayworks are the following: No facts are stated showing that appellant clayworks knew that appellee was ignorant of the threatened danger. It does not appear by direct averment that, if appellant had warned appellee that the railroad company had entered the yard with its engine and was intending to move the cars, appellee could have escaped the injury, nor that said clayworks had knowledge of the action of the railroad company in time to have warned appellee of the danger so as to have enabled him to escape the injury. These objections were, we think, well taken, and the court erred in overruling the demurrer of the appellant clayworks to the complaint."

*Cumberland Tel. Co. v. Cosnahan*, 62 So. 824, 826.

In that case it appeared that a telephone line-man was sent to discover defects in a telephone line. In climbing a pole his hand came in contact with a telephone wire against which an uninsulated power line belonging to another company had negligently been permitted to come in contact, thus electrocuting him. The court said:

“The judgment against the telephone company must, however, be reversed, because of the errors committed by the court in granting several instructions requested by plaintiffs, which were not cured by any of the other instructions. These instructions, in effect, authorized the jury to find for the plaintiffs, in event they should believe from the evidence that Cosnahan’s death was caused by his having come in contact with a telephone wire heavily charged with electricity, and which became so charged by reason of the negligence of the company. As we have heretofore stated, the company is liable, if at all, not by reason of negligence in permitting these wires to come in contact, but by reason of a failure to warn and instruct Cosnahan.”

*St. Louis etc. Co. v. Brantley*, 53 So. 305, 308.

In the excerpt from the opinion sufficiently stating the facts of the case to show the application of the rule contended for, the court said:

“The court below allowed the plaintiff to testify that he had never before helped to unload a machine out of a car. The distinct tendency of this evidence was to impute wrongdoing to the defendant or its superintendent



in failing to adapt and accommodate the degree of care exercised for plaintiff to his immaturity and inexperience. No such case was declared upon. Count 1 did not reach it.

Where the danger of the service is not concealed, but is open to a person of ordinary experience and observation, the master or his superintendent owes no duty to warn or instruct unless the servant is known to be inexperienced; that is, the master or his superintendent must know that the servant by reason of inexperience or immaturity is exposed to an abnormal hazard over and above those which he is presumed to contemplate as incidents of the employment for which he is engaged. The duty in the case put does not arise from the mere relation of master and servant—such duties as are alleged in the first count to have been breached—but from that relation plus a status of the servant which the master is not required to know. *If it is to be proved*, it must be alleged. *Louisville & Nashville v. Wilson*, 50 South. 188; *Republic Iron & Steel Co. v. Williams*, 53 South. 76. In this there was error, and for it a new trial should have been granted.”

And see also the following cases:

- Louft v. C. & J. Pyle Co.*, 75 Atl. 619;
- Stuart v. West End etc.*, 40 N. E. 180;
- McDermott v. Atchison etc.*, 43 Pac. 248;
- Georgia etc. v. Miller*, 16 S. E. 939;
- Pearson v. Boston etc.*, 87 N. E. 571;
- Cote v. Pingree Co.*, 91 N. E. 300;
- Korsman v. Rice*, 84 N. E. 311;
- French v. First Avenue etc.*, 63 Pac. 1108;
- Youll v. Sioux City etc.*, 23 N. W. 736.

It may be argued that the hazard in working near and around a lightning-arrester was increased on account of its alleged negligent construction and maintenance. This alleged negligence consisted in placing the live arms too near the ground, and in too close proximity to the transformer station. This was a mere condition.

To illustrate what we mean by the terms “condition” and “proximate cause”:—

“Suppose A takes passage from San Francisco for Sacramento by railroad; at Port Costa the train is wrecked, by the carelessness of the railroad company, and A is injured. The negligence, being the immediate cause of the injury, is said to be the proximate, the juridical, cause thereof.

Again, suppose the same case, except that the train is wrecked without injury to A, who thereupon takes passage by steamer owned by B for the remainder of the journey; that by the negligence of B the steamer is wrecked and A is injured. In this last case the negligence of B becomes the proximate cause of such injury. True, but for the accident to the train the injury to A would not have occurred, for he would not have sought passage by steamboat, yet it was but a remote cause, a condition in the chain of causation which produced the result, and there could be no just cause for holding the railroad company liable.

‘An act is the proximate cause of an event, when, in the natural order of things and under the circumstances, it would necessarily produce that event, when it is the first and direct power producing the result, the *causa causans* of the schoolmen.’ (Beach on Contributory Negligence, sec. 10.)



If the wrong and resulting damages are not known by common experience to be usually and naturally in sequence, and the damage does not, according to the ordinary course of events, follow from the wrong, then the wrong and the damage are not sufficiently conjoined or concatenated, as cause and effect, to support the action." (Cooley on Torts, sec. 69.) (Bank of Savings v. Murfey, 68 Cal. 455, 462.)

Whether the construction was negligent or not it was there in plain view. The danger was the ordinary and obvious one of coming into contact with a live electric wire. It is not alleged that the live arms were so near the ground that they could not readily be seen. It is not alleged that they were not in plain view. Nothing is alleged which shows that the result to the employee would have been different if he had come into contact with the live arms if they had been farther from the ground.

The essence of the complaint is the act of *setting the employee at work*. If he had not been directed to work near and around the lightning-arrester it would have made no difference whether its construction was negligent or otherwise. This is evidently the theory upon which the complaint was framed because it is alleged "that said place was a *dangerous place in which to work* by reason of the defects alleged herein and by reason of the fact that the live arms of said lightning-arrester were so near the ground and in so close proximity to said substation building". That being so the employer's negligence, if any, consisted in failing to

perform his duty to furnish his employee a reasonably safe place to work; and as has been shown, working near and around live electric wires is a reasonably safe place to work where that is the employee's business. It would be absurd to require an employer under such circumstances to warn an experienced employee to *avoid live electric wires*. Many of the authorities hereinafter cited state that all adults, whether experienced or not, are presumed to have sufficient knowledge of electricity to avoid dangers of that kind, and that the obligation rests upon them to do so. If this be so with respect to inexperienced men of average capacity, how much stronger must be the rule with reference to men accustomed to work near and around live electric wires.

It is therefore respectfully submitted that the complaint fails to show any violation of duty on the part of defendant in error.

5. No facts are alleged showing a causal connection between the alleged negligence and the injury.

On this subject the complaint simply states that "by reason of said negligent and defective construction of said lightning-arrester, and by reason of its construction and maintenance at an unsafe and insufficient distance from the ground, and by reason of its nearness to said transformer house, and by reason of the dangerous place in which plaintiff was ordered to work and of receiving said



shock and charge of electricity plaintiff sustained a number of serious and grievous injuries", etc.

No *fact* is stated showing any proximate connection between the "said negligent and defective construction" and the employee's contact with or proximity to the live arm of the lightning-arrester. The employee simply "came" into contact with or proximity to the wire. *How* he "came" is not alleged. Neither is any *fact* set forth showing any proximate connection between its insufficient distance from the ground and the employee's contact with or proximity to the live arm. Nor is any *fact* set forth showing how its nearness to the transformer house had anything to do with the accident. Neither is it shown how the dangerous nature of the place was proximately concerned with the employee's contact with or proximity to the wire. From all that appears in the complaint to the contrary the employee deliberately went close to or came into actual contact with the wire. It is not even alleged that the employee did not know the wire was there or could not see it, or did not know that it was charged with electricity.

The rule is well settled that proximate causal connection between negligence and injury must be shown in the complaint by allegations of *fact*: Legal conclusions will not answer in such cases. The term "by reason of said negligence" and similar expressions have been held to be mere allegations of conclusions of law. The rule of pleading

is quite liberal with respect to allegations of negligence. Ordinarily, duty having been properly alleged, it is sufficient to allege the act or omission complained of and to add that it was *negligently* done or suffered. But the rule is quite strict as to the necessity of showing, by substantive averments of fact, a causal connection between the alleged negligence and the injury.

*Smith v. Buttner*, 90 Cal. 95.

In that case the complaint set forth that while plaintiffs were in possession as tenants of defendant's house, he raised it six or seven feet, but neglected to provide a suitable means of entrance to, or egress from the house, and that plaintiffs continued to reside in the house after it had been raised, and to pay rent as before, and that by reason of said negligence, the wife, one of the plaintiffs, in endeavoring to descend from the house to the ground, fell and was injured, but no *facts* were averred showing that the alleged negligence caused or contributed to the injury. It was held that the complaint did not state facts sufficient to constitute a cause of action, the court saying:

“The negligence consisted simply in failing to provide a safe, proper and suitable means of entrance to, or egress from the house, and it is alleged that this negligence caused plaintiff to fall. But no fact is averred which shows that such negligence had anything to do with the accident. How did it cause her to fall? It may have been because defendant



neglected to provide any means of egress whatever, or through some patent defect in the plans of the contrivance, whatever it was. In such case, plaintiff could not recover in this action. (Sieber v. Blanc, 76 Cal. 173.) It may have been, consistently with this general statement, because the structure was insufficiently secured and therefore gave way, although properly used. In such case perhaps plaintiff might recover. Such complaint does not state the facts constituting plaintiff's cause of action. It is well settled that negligence may be charged in general terms; that is, what was done being stated, it is sufficient to say it was negligently done without stating the particular omission which rendered the act negligent. But it must appear from the facts averred that the negligence caused or contributed to the injury. To illustrate, suppose a plaintiff injured by the fall of a sign negligently and insecurely fastened by defendant. It would not suffice for him to allege the negligence in hanging the sign; that plaintiff in lawfully, and without negligence passing under it was thrown down and injured through such negligence. This would be a mere assertion of the cause. It would be necessary to show that the sign fell upon him in consequence of such negligence, thereby causing his injury."

*Billesbach v. Larkey*, 12 Cal. App. Dec. 217.

This was an appeal from an order sustaining defendant's demurrer to plaintiff's complaint without leave to amend. The cause of action attempted to be stated was for negligently prescribing for the use of plaintiff a dangerous drug called heroin. It was held that the demurrer was properly sustained, the complaint not stating a cause of action because

no causal connection between the defendant's negligence and the plaintiff's injuries was alleged. The court said:

“While it is settled that negligence may be charged in general terms, *it must appear from the facts averred that the negligence caused or contributed to the injury.* (Smith v. Buttner, 90 Cal 96.) *The complaint must show a causal connection between the negligent acts and the injury.* \* \* \*

“Although negligence may be charged in general terms, it must appear from the facts averred that the negligence caused or contributed to the injury, and it is not sufficient merely to aver that the injury was caused by the negligence averred, if no fact is stated which shows how the injury was caused. (Smith v. Buttner, *supra*.)

“In construing pleadings before judgment, it is presumed the pleader has stated his case in the most favorable manner to himself possible. (Smith v. Buttner, *supra*.) *As it does not appear from the facts averred that the negligence of the defendant caused any injury to plaintiff, the complaint states no cause of action.*

“In coming to this conclusion we have not overlooked the general statement in the complaint, that by reason of said carelessness, negligence and unskillfulness on the part of the defendant, and by reason of the several premises, the plaintiff, Florence Billesbach, was made sick and injured in health and constitution, etc. In this regard the illustration used by Temple, C., in Smith v. Buttner is apt. It was there said: ‘To illustrate, suppose a plaintiff injured by the falling of a sign negligently and insecurely fastened by defendant. It would not suffice for him to allege negligence in hanging the sign; that plaintiff, in lawfully



and without negligence passing under it, was thrown down and injured through such negligence. This would be a mere assertion of the cause. It would be necessary to show that the sign fell upon him in consequence of such negligence, thereby causing his injury.' We apprehend that in such a case it is not only essential to allege that the sign fell upon the plaintiff in consequence of such negligence, but also in falling upon him it injured him."

And see in this connection the Nevada case of *Whitten v. Nevada Power and Light Co.*, 132 Fed. 782, above quoted from.

Although it is alleged that the accident happened "by reason of" the alleged negligence of defendant, there is no fact set forth showing how any such negligence had any proximate connection with the injury. Therefore the complaint does not state facts sufficient to constitute a cause of action.

6. It is impossible to determine from the complaint whether the employee came into contact with the live wire or not. Likewise it cannot be determined whether he received his injury by coming into "close proximity" to the wire. The complaint simply avers that the accident happened in either one or the other of these two ways.

Certainty is one of the main requirements in pleading a cause of action. It will not do to allege that an accident may have happened in one of several different ways. Every defendant is entitled to know exactly how the plaintiff claims the accident happened. If it is permissible to allege that

the accident happened in one of two different ways, without specifying which, it is likewise permissible to allege that it happened in any number of different ways.

*Patton v. Texas etc. Co.*, 179 U. S. 658, 663, 664.

This was an action by a locomotive fireman for damages for personal injuries sustained by him in the turning of a loose step on a locomotive while he was cleaning it at the end of his trip. It was admitted that the steps were suitable and in good condition at the beginning of the trip; that the inspectors at both ends of the trip were competent, and that the plaintiff undertook to clean the engine without waiting for regular inspection which would have undoubtedly led to the discovery and repair of the defect. A verdict was directed for the defendant and in affirming the judgment Mr. Justice Brewer said:

*"And where the testimony leaves the matter uncertain and shows that any one of half a dozen things may have brought about the injury, for some of which the employer is responsible and for some of which he is not, it is not for the jury to guess between these half a dozen causes and find that the negligence of the employer was the real cause, when there is no satisfactory foundation in the testimony for that conclusion."*

At first thought it may appear that this point is of slight importance. But upon more mature consideration it will be clear that it is of vital import-



ance in this action. For instance, a child knows that *contact* with a live electric wire is dangerous. But the fact that electricity will *jump* from one point to another under certain circumstances is not so well known. Therefore, while any person of average intelligence would not be permitted to say that he did not know of the danger of coming into actual contact with a live wire, the rule may not be the same where actual contact is not relied on but where it is claimed that the electricity jumped from the wire to the body of the plaintiff. It will undoubtedly be urged in this action that even though the defendant in error must be charged with knowledge of the danger of contact with live electric wires, he is not so charged with knowledge of the danger of coming into close proximity thereto.

From this it is manifest that the complaint should have been certain in its averments in this regard. This is made the more apparent from the fact, as will appear later, that there is *no evidence* as to whether the plaintiff received his injuries by contact or otherwise; and that liability is sought to be fastened on the plaintiff in error by an equivocal allegation and by testimony from which either inference might, with equal propriety, be drawn.

The plaintiff in error insists that the obligation rested upon the defendant in error to allege and prove, not that the accident might have happened in either one of two ways, but that it did happen

in a certain definite way. Defendant was not present at the time and place of the accident but plaintiff was so present and should therefore have directly alleged and proven how his injuries were caused.

The defendant in error is in no position to complain if the complaint should be declared insufficient. It was demurred to and subsequently the points urged herein were presented to the court at the close of the case of defendant in error. The same objections to the complaint were again urged at the conclusion of the entire testimony. At that time the defendant in error asked permission to file an amended complaint, which was granted. On this subject counsel stated:

“If your Honor please, since that matter has been settled, under that amendment we now ask to amend the fourth paragraph of our complaint by inserting therein an allegation *that the defendant knew that the plaintiff was inexperienced in electricity, and failed and neglected to warn or caution the plaintiff* at the time they sent him to work upon the arrester.” (Record, page 546, fols. 730, 731, 732.)

Subsequently counsel asked permission to withdraw the amendments allowed, which permission was granted. On this subject counsel stated:

“If your Honor please, I have made investigation of the subject respecting the amendment to the complaint, and I find two lines of authorities, one holding that amendment would make the complaint multifarious, and the other line of authorities that it would not; and I



now request the court to be allowed to withdraw the amendment, and stand on the complaint as originally drawn." The court granted counsel's request. (Record, page 553, fol. 747.)

To use counsel's own language, they elected to "stand on the complaint as originally drawn". Therefore, as it clearly fails to state a cause of action defendant in error has no ground for complaint if this court so adjudges.

## B.

### THE EVIDENCE FAILS TO PROVE THE MATERIAL ALLEGATIONS OF THE COMPLAINT.

The motion of plaintiff in error for a peremptory instruction requiring and directing the jury to return a verdict for the defendant, sets forth in detail the particulars in which the evidence is insufficient to warrant the submission of the case to the jury. (Record, page 374, fols. 311 to 321.)

For the purpose of this brief, however, these specifications will be argued under four headings, to wit:

1. The evidence fails to establish the negligence alleged in the complaint, or any negligence on the part of plaintiff in error.

2. The evidence fails to show that there was any proximate causal connection between the negligence of plaintiff in error, if any, and the injuries suffered by defendant in error; but on the contrary the accident happened by reason of a separate

independent and intervening cause for which plaintiff in error was not responsible.

3. The evidence shows that the defendant in error assumed the risk of injury from the danger in question, and that therefore plaintiff in error is not responsible therefor.

4. The evidence shows that the defendant in error was guilty of contributory negligence.

1. *The evidence is insufficient to establish negligence on the part of plaintiff in error.*

It has already been shown that the complaint fails to set forth certain facts necessary to create a duty on the part of plaintiff in error. The evidence exhibits the same weakness.

An attempt was made to show that defendant in error was employed as a laborer only. This was met by the allegation in the complaint that he was employed as a "laborer and electrician's helper"; that the answer denies that he was employed as a laborer; and that it was therefore an *admitted fact* that he was employed as an electrician's helper.

The evidence very clearly shows that from April, 1911, up to July 18, 1911, the date of the accident, he actually worked in different capacities. Part of the time he worked as a laborer and received a laborer's pay of \$4.00 per day; part of the time as an electrician's helper, receiving the usual pay of \$4.00 per day therefor; and part of the time



as a *lineman*, receiving a lineman's pay of \$4.50 per day. The evidence upon this point is not disputed because the pay checks issued to defendant in error and cashed by him are in evidence and show on their faces the character of his employment and his rate of wage.

The evidence therefore establishes, without conflict, that defendant in error was an *experienced* employee. It is true that his work was dangerous but so is the work of any experienced person working near and around live electric wires.

Not only did the pleadings admit that defendant in error was experienced, but his cross-examination exhibits beyond question, and without conflict, great and extended experience in several extremely dangerous lines of work. He gave his trade as "steam stationary engineer" (Record, page 99, fol. 3).

At different times he was employed in running engines, operating steam boilers, operating electric dynamos or generators, operating electric motors, constructing power lines, installing transformers and doing an indefinite number of other things in connection with electricity. He had also engaged in blasting with dynamite. He was a man of thorough experience in dangerous work of many different kinds. He was also a man of splendid physique, being six feet six inches tall and weighing over 200 pounds. Mentally he was far above the average in his walk of life.

When he accepted employment with plaintiff in error in April 1911, he was already experienced and thereafter until the happening of the accident he worked constantly with electricians and linemen and was constantly gaining knowledge and experience. On the day of the accident, therefore, he was a workman of much more than ordinary ability, capacity and competency, and one upon whom any employer might be entitled to rely to faithfully perform responsible and dangerous duties.

There is *no evidence* that defendant in error accepted employment as an *inexperienced* man, or claimed to be inexperienced, or that his method of work indicated inexperience. On the contrary, Mr. Halpenny, electrician for plaintiff in error, and the immediate superior of defendant in error, testified that he always regarded Sheaff as a superior workman and entirely competent.

It may be claimed that certain evidence as to declarations of Mr. Halpenny, offered for the sole purpose of impeaching him, is substantive evidence of knowledge on his part of Sheaff's inexperience. Certain witnesses were allowed to testify over the objections of plaintiff in error that Mr. Halpenny had expressed doubts of the propriety of his sending Sheaff to do the particular work he was performing when injured. Halpenny had testified that he regarded Sheaff as a thoroughly competent man. The purpose of these declarations was to impeach Halpenny with respect to that testimony.



That being so they can have no other effect. Impeaching testimony is not independent substantive testimony in a case but its only purpose and effect is to discount or weaken the testimony of a witness.

*Keyes v. Geary Street etc.*, 93 Pac. 88;

*People v. Davenport*, 13 Cal. App. 632;

*Worley v. Spreckels etc. Co.*, 125 Pac. 697.

It is quite apparent, therefore, that when Sheaff was ordered to do the particular work in question he was treated and entitled to be treated by his employer precisely the same as any other experienced and competent man would be treated. He was not told how to do the particular work assigned to him because it was presumed, nay known, that he knew how to do it. Neither was he warned (otherwise than by warning signs) with respect to the danger of contact with or proximity to live wires, because he was presumed to have sufficient knowledge on that subject.

Let us see, therefore, exactly what kind of work the plaintiff was doing when he was injured, the instructions that had been given him, and all of the circumstances surrounding the precise situation at the moment of the accident.

These facts are quite simple. The lightning-arrester had been completed for some time. It was enclosed by a wire fence. Upon the door of the substation there was a danger sign. On one of the switch posts within the enclosure where the lightning-arrester was situated there was a sign in plain

letters about two inches long, reading, "DANGER—HIGH VOLTAGE—KEEP OUT." This sign was placed in such a position that it could readily be seen by anybody coming up the trail toward the substation, or by any one entering the enclosure at the point where Sheaff testifies he entered it.

The ground wires on the dead arms of the lightning-arrester were not satisfactory to Halpenny. They did not afford sufficient resistance. He therefore decided to place a concrete block under the end of each of the dead arms, place a metal clamp on each of the three blocks and connect the ground wires to each end of the concrete blocks. The blocks were to be partly buried, and it was necessary that holes should be dug for that purpose. The purpose of the concrete blocks was to furnish a greater resistance to any electric current that might pass through the dead arms of the lightning-arrester in case of any heavy surge on the high tension wires above.

About a week or so before the accident a similar lightning-arrester had been completed at the Wonder substation. It had been constructed by Halpenny with the assistance of Sheaff. Similar concrete blocks had been placed under the dead arms of that lightning-arrester. Sheaff made the blocks, dug the holes, and assisted in placing them. On the night before the accident Halpenny directed Sheaff to go to the Fairview station and do the same kind of work on the lightning-arrester there that he had just finished doing on the lightning-arrester at



Wonder. In other words, he was to dig holes under the three dead arms of the lightning-arrester, place therein the three concrete blocks which he (Sheaff) had already made and taken with him to Fairview, and to attach the clamps thereto, which had been ordered made by the blacksmith at the mine near the station. With reference to his instructions Sheaff testified as follows:

“When I was sent over there I was told to get some clamps made and to dig some holes and put some concrete blocks into them. These concrete blocks were made of sand and cement. I made them in Wonder and they were about eight inches square and about two feet long. I was told where to dig the holes by Mr. Halpenny. He said, dig the holes under the lightning-arrester, *right plumb under the arms nearest the switch*. There were six arms of the lightning-arrester. I received that instruction in Wonder.” (Record, fols. 23, 24, page 107.)

On cross-examination Sheaff testified on the same subject:

“I don’t remember Mr. Halpenny telling me to use a plumb line. I don’t think he did tell me then to attach anything to that pipe. *He told me to dig the holes under the arms. He said the side nearest the switch*. I understood him by the arm to mean the ends of those pipes sticking up there. I think he did use the word ‘arm’. I don’t think he did use the word ‘horn’. In telling me to dig the holes I don’t remember just what the exact words used were, whether he said under the horn or under the arm or under the pipe. He said to dig them on the side nearest the switch. *I could not be positive that he did not say the dead side*. He told me to dig the holes underneath the arms. I don’t know

how I happened to dig it underneath the point of the arm. Possibly he had told me to dig it under the point. *As near as I can tell you he told me to dig those holes under the arms nearest the switch.* I don't remember of his telling me to dig them under the point. I happened to dig them under the point because I presume that is where he wanted them. I don't know how I happened to presume that is where he wanted them. *I guess it was because I knew of my own knowledge and experience where they ought to be dug. I had done that same work on the Wonder lightning-arrester, and I had dug those holes on the Wonder lightning-arrester, and had assisted in placing the concrete blocks at the Wonder arrester. I guess that was how I came to know how to do that work. I had done that work at the Wonder substation under the direction and under the instructions of Mr. Halpenny, with Mr. Halpenny right there telling me how to do it. When I had finished that work at the Wonder substation, I knew how to do that thing, and when I was instructed by Mr. Halpenny to go over there and do that work, I knew how to do the work I was assigned to do. I knew where to place the holes."* (Records, fols. 249-253, pages 192-194.)

The enclosure where Sheaff was set to work was only dangerous to one coming within an inch and three-quarters of the live arms of the lightning-arrester. Every other part of the enclosure was perfectly safe. The work Sheaff was ordered to do was on the *dead* side of the lightning-arrester, probably about four feet from the live arms. The dead arms and part of the framework of the lightning-arrester were between the point where his work



was to be done and the live arms. In order to come into contact with or close proximity to the live arms he would be obliged to leave his place of work and go to the part of the enclosure where he had not been ordered to go and where he had no work to do.

It appears without conflict that he was ordered, upon finishing the work assigned to him, to do nothing more but wait until Mr. Halpenny came the next day. Mr. Halpenny was to do the wiring and Sheaff was ordered by Halpenny to let the wires alone. There is some slight difference in this respect, not amounting to a conflict, between the testimony of Sheaff and Halpenny. Sheaff says that he does not remember of Halpenny's saying anything to him about the wiring. He does not state, however, that Halpenny ordered him to do any work on the wires whatever. Halpenny, on the other hand, testifies that he told Sheaff not to touch the wiring because he would be over the next day to do that part of the work.

There was a plain and safe way of ingress and egress to the point where Sheaff's work was to be done. He could have entered the enclosure, done his work and left the enclosure without going nearer a live wire than about four feet. Even if he had remained but *two inches* from the live arms he would not have been injured. It appears without contradiction that electricity of the voltage then carried could not jump more than one and three-quarters inches under the most favorable conditions, and a man's body is not a good conductor. Some

part of a man's body would have to go within one and three-quarters of an inch of the live arm before any injury could occur.

The case, therefore, resolves itself to this: *An experienced man was ordered to do work which was in itself perfectly safe; work that he had done before under the eye of his superior and under practically the same conditions; and work which he acknowledged he understood perfectly well how to do. To do this work he was obliged to enter an enclosure where there was a dangerous contrivance. He acknowledges he knew the danger of coming into contact with live electric wires. The wires in question were not concealed but were in perfectly plain view. At the point where he entered the enclosure there was staring him in the face a danger sign reading, "DANGER—HIGH VOLTAGE—KEEP OUT." The audible purring of the transformers spoke and in a loud voice said: "These wires are charged with electricity." He could have gone to his work, done it and left the enclosure without going near the live wires.*

*Under such circumstances what DUTY did the employer violate in sending him to do that particular work?*

We have searched the books in vain to find any case holding a master guilty of negligence under such circumstances. Although the complaint contains no allegation of a lack of warning this *experienced* employee was actually warned by the danger sign and by the purring of the transformers as well.



Moreover, at the Wonder lightning-arrester, which he assisted in building, he had actually painted the danger sign which was placed upon that substation.

Although it seems too plain for argument that the master was guilty of no negligence, a few apposite cases will, out of an abundance of caution, be cited.

*Looney v. Metropolitan R. Co.*, 200 U. S. 480;

*Andrews v. Valley Ice Co.*, 167 Cal. 11, 20, 21;

*Felton v. Girardy*, 104 Fed. 127;

*Kohn v. McNulta*, 147 U. S. 238;

*Tuttle v. Detroit etc. Co.*, 122 U. S. 189;

*Blick v. Olds Motor Works*, 141 N. W. 680;

*Dunbar v. Hollingsworth etc. Co.*, 84 Atl. 992,  
994.

It must be conceded by defendant in error that the side of the enclosure nearest the switch, the place to which defendant in error was assigned to work, was a place entirely safe. Defendant in error was not therefore set to work in a dangerous place. There was neither allegation nor proof that plaintiff in error had knowledge or was chargeable with notice that defendant in error would go to a part of the enclosure wherein he had no work to do and wherein, it must be assumed, he realized the only source of danger lay.

The rule that the master must furnish his servant a reasonably safe place to work does not extend beyond the place where the master has knowledge, or is chargeable with knowledge, that the servant may be expected to go in performance of his duties.

This is so well settled as to require no citation of authority.

The case last cited, *Dunbar v. Hollingsworth etc. Co.*, 84 Atl. 292, 294, is so extremely apposite as to justify extended quotation. The court said:

“So far as the ‘safe place to work’ rule is concerned, it need only be said that it is not applicable to the situation in this case. That danger was lurking in the charged electric wires is true. Yet the place, to one who knew and appreciated the danger, and used the degree of care which was requisite to the situation, that is to say, due care under the existing circumstances, was ‘safe’, as the word is used in the master and servant rule. Besides, but for the guy wire, the witnesses all agree that the plaintiff’s work was not dangerous. The pole which the plaintiff climbed was dry. Dry wood is practically a nonconductor of electricity. The plaintiff might have rested upon the cross-arm, or upon the pole, and touched the live wire without harm, unless he was in contact with some conductor. The guy wire was a conductor. It was the presence of the guy wire which created the danger. But work has to be done at times in dangerous places. If the workman knows and appreciates the danger, or if by the exercise of reasonable care he would have known and appreciated it, he is held to have assumed the risk of danger. *Caven v. Granite Co.*, 99 Me. 285, 59 Atl. 285. And this rule has especial force in a case where the dangerous risk lies in the voluntary movements of the workman himself, movements which he can control, and for which he is responsible. When the place to work is itself dangerous, the master is absolved from liability, if the workman knew and appreciated the danger, or should have done so. And this leads to a consideration of



the other alleged ground of negligence, the failure to instruct the plaintiff as to the danger.

If the servant knows and appreciates the danger, instruction is not necessary. If the servant does not know and appreciate the danger, and would not have known it by the exercise of due care, as if the danger is not obvious, and the servant is inexperienced, it is the duty of the master to give him suitable warning of the danger. But in this respect the duty is not absolute. As in the case of furnishing safe and suitable appliances, or a safe place to work, the master is bound to use due care. He is held to no more. Negligence, or want of due care, is the basis of the action. If he uses due care, he does all that the law requires. *Cowett v. American Woolen Company*, 97 Me. 543, 55 Atl. 494. The care of the master must be equal to the emergency, and must be determined by the conduct of ordinarily prudent men, under like circumstances. *Snowdal v. United Box Board & Paper Co.*, 100 Me. 300, 61 Atl. 683. But this need not be considered further, for we think that the case clearly shows that the plaintiff knew and appreciated the danger, and hence that instructions were unnecessary. He was a mature and intelligent mechanic. *In this age of the world, it is not unreasonable to impute to intelligent men some knowledge that contact with wires carrying a voltage of 2,200 volts is, or is likely to be, dangerous. For such a man to say otherwise is unbelievable.*"

In considering this phase of the case we have treated the evidence from its most favorable aspect to the defendant in error. The facts relied upon were developed by the testimony of defendant in error and his own witnesses, principally by

Sheaff himself. We have avoided all questions as to which there is any conflict and have relied only on such facts as are binding upon the defendant in error.

It is therefore most respectfully submitted that the evidence utterly fails to show any negligence on the part of defendant in error.

*2. The evidence fails to show that there was any proximate causal connection between the negligence of plaintiff in error, if any, and the injuries suffered by defendant in error; but on the contrary the accident happened by reason of a separate, independent, intervening cause for which plaintiff in error was not responsible.*

On this subject it will be unnecessary to discuss the evidence at length. One of the charges of negligence is that the lightning-arrester was built too close to the substation. There is no evidence to show that this charge is true, but even if it were there is no evidence to show that the space between the lightning-arrester and the substation had anything to do with the accident. According to his own testimony Sheaff was not between the live arms of the lightning-arrester and the substation when he was injured. At his last moment of consciousness he was north of the lightning-arrester and walking toward the substation. He had not entered the space between the lightning-arrester and the substation. Therefore, there is a total ab-



sence of causal connection between that charge of negligence and the injury.

Likewise there is a lack of causal connection between the other charge of negligence and the injury. It is claimed that the plaintiff in error was negligent in placing the lightning-arrester too close to the ground. Assuming this to be true it amounts only to a condition. A lightning-arrester is dangerous wherever it is placed. It cannot be insulated. If a workman is required to work in its vicinity it is dangerous even if it is above the ground, on the ground, or under the ground. The important fact is not that the place was dangerous, because it had to be so under the best possible conditions. The fact of sending an employee to work in a dangerous place is the important thing.

It appears, as already shown, that the employee was sent to work in a safe place, and that his means of access to and egress from his place of work were also safe. Therefore the accident did not occur by anything *proximately connected* with his work or his orders respecting that work. We must look to another proximate cause for the accident itself.

What was that cause? After the third hole was dug Sheaff, instead of leaving the enclosure by the route he had entered it, elected to leave it by a different route which would take him between the live arms of the lightning-arrester and the substation. According to his own admission, with this idea in view, he "wandered" between the live arms and

the substation "without thinking", and in some manner, he does not know how, came either in contact with or so close to a live arm of the lightning-arrester that he was injured.

Under such circumstances we consider that the only possible inference deducible from the evidence is that the immediate, proximate, separate, independent and intervening cause of his accident was his own voluntary act in unthinkingly and unnecessarily attempting to leave the enclosure by a dangerous route when there was a perfectly safe one open to him.

*Morris v. Duluth etc. Co.*, 108 Fed. 747, 749  
(and cases cited).

3. *The evidence shows that the defendant in error assumed the risk of injury from the danger in question and that therefore plaintiff in error is not responsible therefor.*

The facts already adverted to are sufficient to establish this proposition. Sheaff was an experienced employee. He was ordered to do plain, simple, safe work which he fully understood. In doing the work he was not *necessarily* in any danger. Danger of any sort was about four feet from him. He was presumed, as an electrician's helper, to have known sufficient of electricity to have been able to avoid such danger. He did actually know of the danger of coming into contact with live electric wires. He had before him a warning that



the enclosure he entered was a danger zone. He knew that the current was on the wires and heard the purring of the transformers that very morning. He knew that the purring meant that the electricity was passing through the transformers.

The District Court held that from Sheaff's act in attaching a plumb-line to the dead arms the jury might infer inexperience or ignorance of danger. The court's point was that if a surge had occurred even the dead arms would be dangerous. But the court evidently did not have in mind the fact upon which all the experts agreed, that even under those circumstances there would be no danger from the dead arms. The current would pass to the ground through the ground wires—the line of least resistance. Even during a surge the dead arms could have been handled without injury. Of this Sheaff was probably aware.

The particular point of danger in the enclosure was not hidden. The live arms of the lightning-arrester were in plain view and their connections with the high tension wires above were also in plain view. To get near the live wires he had to leave his place of work and go into a part of the enclosure where he had no duty to perform.

Under these circumstances we submit that he assumed the risk of injury to himself.

*Dunbar v. Hollingsworth etc. Co.*, 84 Atl. 992, 994.

4. *The evidence shows that the defendant in error was guilty of contributory negligence.*

The rule on this question is applicable alike to experienced and inexperienced adults. Of course it bears more strongly upon experienced men, but it is undoubtedly the law that all men of average intelligence must be conclusively presumed to know enough to avoid open, apparent and patent dangers. Such dangers every adult of average intelligence must use ordinary care to avoid. If he fails to do so and his failure in that respect proximately contributes to his injury, he cannot recover even if his employer is also guilty of negligence.

It will require but a meager recital of the facts existing at the time of the accident to demonstrate Sheaff's gross negligence. In the first place he had been working for years at dangerous employments; he had been working about electric wires and near live wires for months; he had assisted in constructing two lightning-arresters; he had assisted in installing transformers in two substations; he had actually constructed a power line, doing all the wiring himself and being in charge of the entire work; he was present when the power was turned into the substation at which he was injured. At the time of his injury he knew that power had been passing through those high tension wires, through the transformers into the substation, through other transformers belonging to the mining company, and that it was being used at the mine.



On the morning of the accident he went into the substation upon the door of which there was a danger sign. While there he heard the purring of the transformers, indicating that the current was passing through the substation. He was well acquainted with that sound and knew what it meant. He went to the rear of the substation and there found an enclosure within which was the lightning-arrester. On one of the switch-posts near the lightning-arrester, and facing him, was a danger sign reading, "DANGER—HIGH VOLTAGE—KEEP OUT." He removed the staples fastening the wires of the enclosure to the substation and entered. He says he did not see the danger sign, but it was his duty to see it if he was not already aware of the danger. (*Moore on Facts*, Vol. I, Sec. 191; *Chicago etc. R. Co.*, 139 Fed. 65, 71.) The enclosure itself, having no gateway or entrance, was a sign of danger. He had painted the danger sign to be placed on the lightning-arrester at Wonder. This alone was sufficient to charge him with knowledge of the danger of such a contrivance. He went to his place of work by a perfectly safe route. He did his work in a perfectly safe place. He could have left his place of work by the same route. Instead of doing so, with the transformers purring in his ears, and the connections between the live arms of the lightning-arrester and the high tension wires in plain view, he elected to leave the enclosure by a different route which would take him between the live arms of the lightning-arrester and the substation, making it

necessary for him to come within probably a foot of the live arms. Under these circumstances he "wandered" toward the substation "without thinking". Just how or where he received his injury the evidence does not disclose, although the burden was upon the defendant in error to establish that fact. The burden of the defendant in error was to establish negligence and causal connection. But from the mark on the point of the northerly arm of the lightning-arrester the inference may be drawn that he came into contact with or within an inch and three-quarters of that point and that an arc was formed between that point and his body allowing the current to pass through his body to the ground. *It is therefore quite apparent from the evidence that he must have WANDERED WITHOUT THINKING to a point within an inch and three-quarters of the end of the northerly arm of the lightning-arrester.* In no other manner could the injury have occurred. There is no evidence of an unusual surge on the line. There was no lightning and there were no unusual conditions existing on that morning. It was a beautiful day. If there had been a surge the electricity could not have jumped more than four and one-half inches and formed an arc with his body. Before doing so it would have chosen a route of less resistance, namely, viz., jumped across from the live arms to the dead arms. So that it is demonstrated that even if there was a surge on the wire Sheaff must have been within four and one-half inches of the tip of the northerly



arm. According to his own testimony he wandered there without thinking. He thus negligently placed himself, without the exercise of any care whatsoever on his part, in a fearfully dangerous position and, of course, was injured.

If Sheaff *had used any care at all* a question of fact for the jury to determine might have arisen as to whether such care constituted "ordinary care", but it would be very difficult for a jury to determine that absolute want of care constitutes ordinary care. Where an injured person admits that he wandered without thinking toward a plain, open, obvious and patent danger it must be concluded as matter of law that he exercises no care at all. And if the performance of his duty required him to go into that position and, with his mind full of his duties, he was injured unthinkingly there might be some shadow of excuse for his action; but his duties did not require him to go near the live arms of the lightning-arrester at all. And the rule is well established that where there is a safe means of ingress and egress to an employee's place of work, the employee is bound to use that route rather than a dangerous one. If he voluntarily uses the dangerous one and is injured he is guilty of contributory negligence (see cases hereinafter cited).

From our point of view the plaintiff in error is no more responsible for Sheaff's injury in this case than if he had been injured on the way to Fairview by coming in contact with a live electric wire. There is even less responsibility on the plaintiff in error

here because Sheaff was warned both by the enclosure itself and by the danger sign, that the enclosure was a danger zone.

Of course the defense of contributory negligence involves negligence on the part of the employer and we are arguing this question on the assumption that such negligence existed; but we do not wish to be understood as making any such admission. On the contrary, we consider the testimony full and complete to the effect that the lightning-arrester itself was properly constructed. It was a standard form of lightning-arrester used by many power companies in the west. There was no standard rule requiring it to be placed in any particular position. There is evidence that it would be more dangerous for an employee to work above the ground than near the ground. There is conflicting *opinion evidence*, however, on the subject. Sheaff's witnesses testify that it should have been constructed a greater distance from the ground. The witnesses for defendant in error state that its construction near the ground within an enclosure and plainly labeled with a danger sign was safer, so far as employees were concerned, than if built a greater distance from the ground. So far as third parties were concerned it did not matter that it was built near the ground because that was a desert country and very few people were in the neighborhood. Furthermore, the substation and lightning-arrester were built on the extreme top of a hill—an isolated place.



It is possible, however, that the evidence is sufficient to raise a question of fact for the jury as to whether the lightning-arrester was built too close to the ground or not. But if so we have shown, not only that there was no causal connection between such negligence (if it can be so termed) and Sheaff's injury, but that his own negligence certainly contributed proximately to his injury. If this be true there is no question but that he was guilty of contributory negligence and cannot recover.

"We have stated elsewhere that objects plainly visible are presumed to have been seen. A parallel presumption exists in respect to sounds." (*Moore on Facts*, Vol. I, Sec. 191, and cases cited. See also *Chicago etc. Ry. Co. v. Andrews*, 139 Fed. 65, 71.)

For further support of the proposition that plaintiff was guilty of contributory negligence as a matter of law, see the following cases:

*Looney v. Duluth etc. Co.*, 200 U. S. 480;  
*Andrews v. Valley Ice Co.*, 167 Cal. 11, 20, 21;  
*Dunbar v. Hollingsworth Co.*, 84 Cal. 992,  
 994;  
*Morris v. Duluth etc. Co.*, 108 Fed. 747, 749.

---

### III.

*The District Court erred in refusing to give to the jury the following instruction:*

"You are instructed that the only cause of action, which the plaintiff is entitled to have

submitted to you for consideration, is based upon the charge that the defendant sent the plaintiff to work at a place which was not reasonably safe in view of the unusual or extraordinary risks incident thereto, if any there were.

“You are, therefore, further instructed that if you find from the evidence that the place to which plaintiff was sent to work was a reasonably safe place, as the expression or term is hereinafter defined, your verdict must be in favor of the defendant, Pacific Power Company.” (Record fols. 808, 809, pages 576, 577.)

The purpose of this instruction was to limit the jury, in considering the evidence, to the charge that defendant in error was negligently ordered to work in a place which was not reasonably safe. The complaint charged negligence in the construction and maintenance of the lightning-arrester. As already shown, it is our contention that such negligence, if any, had no proximate connection with the injury; that the essence of the cause of action, if any, was negligence in ordering defendant in error to work in a place which was not reasonably safe, without warning or instruction. Negligence in the construction of the lightning-arrester had nothing to do with the injury at all. If there was any actionable negligence it was the act of the plaintiff in error in sending the defendant in error to work near and around the lightning-arrester in its then position, whether constructed negligently or otherwise.



The refusal of the court to give this instruction as proposed left it to the jury to determine that negligence in the construction of the lightning-arrester would authorize a verdict against the plaintiff in error even though such negligence were completely "insulated" (to borrow a word employed by a Federal Judge) from the injury.

This instruction was given in a qualified and limited form (fol. 769). The qualification was error. There was no allegation in the complaint as to the company's knowledge of Sheaff's inexperience, and that question should not have been submitted to the jury.

---

#### IV.

*The District Court erred in refusing to give the following instruction:*

"The complaint does not allege that the plaintiff was unfamiliar with or ignorant of the ordinary duties of an electrician's helper, and does not allege that the plaintiff was ignorant of the ordinary risks and dangers of his employment as an electrician's helper. You are, therefore, instructed that it must be taken as an admitted fact in this case, so far as the charges of negligence against the defendant are concerned, that the plaintiff was familiar with the ordinary duties of an electrician's helper and comprehended all of the usual and ordinary risks and dangers attending the said employment." (Record fols. 810, page 577.)

The complaint does not allege that the defendant in error was ignorant of the ordinary duties of an electrician's helper, or of the ordinary risks and dangers of his employment as an electrician's helper. That being the case plaintiff in error was entitled to have the jury instructed that it must be taken as an admitted fact that the defendant in error was familiar with the ordinary duties of an electrician's helper, and that he must be held to have comprehended all of the usual and ordinary risks and dangers attending that employment. The instruction undoubtedly states the law and, in our opinion, should have been given as proposed. The court's qualification thereof (fol. 792) was error. (See authorities heretofore cited.)

---

## V.

*The District Court erred in refusing to give the following instruction:*

“The complaint does not allege that the plaintiff was unacquainted with or ignorant of all of the dangers incident to the work of a journeyman lineman and electrician, but does state that the plaintiff was unacquainted with and ignorant of the dangers incident to the work of a journeyman lineman and electrician upon and near the wires or apparatus carrying electric current of high voltage and potential energy. You are instructed, therefore, that in so far as the charges of negligence against the defendant are concerned, it must be taken as an admitted fact in the case that the plaintiff



was acquainted with and not ignorant of any of the dangers incident to the work of a journeyman lineman and electrician, excepting upon or near wires or apparatus carrying electric current of high voltage and potential energy. As to all other matters relating to such duties and dangers he must be deemed, in so far as negligence against the defendant is concerned, to have had knowledge of such dangers." (Record fols. 812, 813, page 578.)

The complaint in this case is quite peculiar in this, that while it alleges that the defendant in error was employed as a laborer and electrician's helper, it contains no allegation to the effect that he was ignorant of the dangers incident to that employment. It does state, however, that he was ignorant of *certain* of the dangers incident to the work of a journeyman lineman and electrician. That being the case the plaintiff in error was entitled to have the jury instructed on that subject so that the extent of the knowledge of the defendant in error on the subject of electricity, as admitted by the pleadings, might be fully understood.

---

## VI.

*The District Court erred in refusing to give the following instruction:*

"The complaint, as amended, charges as one of the alleged defects of the lightning-arrester that it was placed or constructed too close to the substation building. You are instructed that the evidence fails to sustain this charge,

and you will, therefore, ignore it in arriving at your verdict.” (Record fol. 814, page 579.)

There is no evidence to show that the lightning-arrester was constructed too close to the substation building. Neither is there any evidence showing that any such defective construction was even remotely connected with the accident. It is not contended that the defendant in error was injured by going between the lightning-arrester and the substation building. He was undoubtedly injured on the northerly side of the lightning-arrester and before entering the space between the lightning-arrester and the substation building. As there was no possible liability on that ground the jury should have been instructed that the evidence failed to sustain that charge of negligence.

---

## VII.

*The District Court erred in refusing to give the following instruction:*

“Certain evidence has been admitted in this case with respect to the question as to whether or not the defendant warned the plaintiff as to the dangers attending the work, upon which he was engaged at the time of the accident, if any, and whether the defendant instructed him as to how to avoid such danger. In this connection you are instructed that the complaint does not set forth any cause of action against the defendant based upon any alleged failure of the defendant to give the plaintiff any such warning or instruction, and you cannot, there-



fore, find the defendant guilty of negligence on that ground.” (Record fol. 815, page 579.)

Of course there can be no recovery upon any cause of action not set forth in the complaint. Evidence was allowed to be introduced upon the question of warning and instruction and it was therefore necessary that the court would limit the application of such evidence to the case actually made by the complaint. It cannot be denied that the complaint contains no allegation at all on the subject of warning or instruction. Therefore, in order to make entirely clear the issues of fact before the jury it was necessary, in our opinion, that this instruction should be given.

It clearly states the law and confines the jury to the precise issues made by the pleadings.

---

## VIII.

*The District Court erred in refusing to give the following instruction:*

“Although the place to which an employee is sent to work may be actually dangerous, it may, notwithstanding, be a reasonably safe place to work within the meaning of the law relating to the duty of an employer toward his employees. Some occupations are essentially dangerous, and some places where employees are obliged to work are essentially dangerous, but it does not follow that an employer is negligent in sending an employee to work in such dangerous place. Dangerous work, such as

working about electricity, is lawful and must be done. Therefore, an employer has a right to set an employee at such work or to direct him to work in a dangerous place, and an adult employee, who accepts such work, takes upon himself the risk of the ordinary dangers incident thereto. The greater the risk and danger of the particular work or the particular place, the greater is the risk which the employee assumes. It is only concealed and latent dangers, or dangers of which he does not or should not know and appreciate the risk, for which the employee does not assume the responsibility. Therefore, if an employee is sent to work in a dangerous place, but the dangers, even though great, are open, plain and obvious and such as are or should be known to an adult person of ordinary intelligence and capacity, such place is under the law a reasonably safe place to work, and the employer is not responsible for any injury that may be sustained by the employee through or by reason of such dangers.” (Record fol. 818, pages 580 to 584.)

The greater part of the foregoing instruction was given but the court refused to give the following:

“If an employee is sent to work in a dangerous place, but the dangers, even though great, are open, plain and obvious and such as are or should be known to an adult person of ordinary intelligence and capacity, such place is under the law a reasonably safe place to work.”

Of this part of the instruction the court said, in the presence of the jury:

“I cannot, as a matter of law, instruct the jury that a dangerous place, no matter how dangerous it is, and how unnecessarily dangerous it is, is a safe place to work, if the servant knows and appreciates the danger.”



In refusing the foregoing part of the instruction, and in its comments thereon, we think the court committed grievous error. The law, as we understand it, is that even though danger is great, if the servant knows and appreciates it, or if it is so open, plain and obvious that it should be known to an adult person of ordinary intelligence and capacity, he assumes the risk of it and the place, within the rule, is reasonably safe.

*Dunbar v. Hollingsworth etc. Co.*, 84 Atl. 992, 994.

---

## IX.

*The District Court erred in refusing to give the following instruction:*

“If you find that the defendant sent the plaintiff to work in a place which was actually dangerous, but the danger thereof was open and appreciated by him, I instruct you that the place to which he was sent was reasonably safe, and his employer cannot be held responsible for injuries suffered by him through or on account of such dangers.” (Record fol. 826, page 584.)

The substance of this instruction is that if the defendant in error appreciated the dangers of his employment, and that they were plain and open, his employer was not responsible for setting him at work. The cases heretofore cited demonstrate that this is the law.

## X.

*The District Court erred in refusing to give the following instruction:*

“You are instructed that the danger attending the employment of the plaintiff at the time of his injury was open, patent and obvious and such as should have been known and appreciated by an adult person of ordinary intelligence, experience and capacity. This being so he assumed all the risks thereof, and your verdict must, therefore, be in favor of the defendant.”  
(Record fol. 827, page 584.)

This instruction clearly states the law. If the danger attending the employment of the defendant in error was open, patent and obvious and such as should have been known and appreciated by an adult person of ordinary intelligence and capacity, he assumed the risk and the plaintiff in error was entitled to a verdict. Plaintiff in error was entitled, in our judgment, to have the jury instructed in this concrete and definite form.

---

CONCLUSION.

When Lee Campbell, one of Sheaff's witnesses, was asked whether he knew the purring sound of transformers, he said: “You bet I have heard that purring sound on the transformers frequently. It is a peculiar sound—*just like a rattlesnake.*” This suggests an illustration with which we desire to close this brief:



Suppose a corporation is constructing a telegraph line through a country infested with rattlesnakes. An adult employee of average intelligence is set to work to dig a hole for a telegraph pole in a coppice or thicket enclosed by a substantial fence. His instructions are to dig the hole at a particular place. While climbing the fence there is plainly before his eyes a sign reading:

“DANGER—RATTLESNAKES WITHIN THIS ENCLOSURE  
—LOOK OUT.”

He proceeds by a route where there happens to be no underbrush to the point where the hole is to be dug. He digs it and then starts to wander unthinkingly about the thicket. He hears the rattling of the rattlesnakes but pays no attention and wanders on in the direction from whence the sound comes, and is bitten by a rattlesnake.

How does this illustration apply to the present case? The warning is the same, the necessity for taking down or climbing the fence to enter is the same, the safe passage to a point where the work was to be done is the same, the opportunity to leave the thicket by the same route he entered is the same, the rattling of the reptiles is analogous to the purr of the transformers which he heard, and the wandering unthinkingly into the danger is the same.

We must not forget that plaintiff was not sent to do *electrical* work. His work on that particular morning was laborer's or helper's work. But he carried with him in doing that work all of the knowl-

edge he had gained in an experience of years in many dangerous employments, including electricity.

The live wire bore the same relation to his work as did the reptile in the illustration. The defendant in error should have avoided the live wire precisely the same as the laborer should have avoided the reptile.

Viewed from any reasonable standpoint we feel that the defendant in error is not entitled to recover any damages from the plaintiff in error and therefore request a reversal of the judgment appealed from.

Dated, San Francisco,  
September 25, 1915.

Respectfully submitted,

METSON, DREW & McKENZIE,  
WM. M. ABBOTT,

AND

WM. M. CANNON,  
GEO. A. BARTLETT,  
*Attorneys for Plaintiff in Error.*





1

No. 2603

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

---

PACIFIC POWER COMPANY (a Corporation),  
*Plaintiff in Error,*

VS.

P. R. SHEAFF,

*Defendant in Error.*

---

UPON WRIT OF ERROR TO THE UNITED STATES DISTRICT COURT OF THE  
STATE OF NEVADA.

---

BRIEF FOR DEFENDANT IN ERROR.

---

B. F. CURLER,

*Attorney for Defendant in Error.*

---

*Filed this* **Filed** *day of October, 1915.*

OCT 4 - 1915

*Clerk.*

**F. D. Monckton,**

**Clerk.**

*Deputy Clerk.*





No. 2603.

---

**United States Court of Appeals,**  
**FOR THE NINTH CIRCUIT.**

---

PACIFIC POWER COMPANY (a Corporation),  
*Plaintiff in Error,*

vs.

P. R. SHEAFF,  
*Defendant in Error.*

---

**BRIEF OF DEFENDANT IN ERROR**

In his Brief, Counsel for Plaintiff in Error has urged and alleged as grounds for the reversal of the judgment in the District Court, eleven specifications of error, the first of which specifications contains *only* nineteen subdivisions.

These specifications he has not discussed seriatim but has divided his argument into five general heads as follows:

FIRST. The complaint does not state a cause of action.

SECOND. The evidence fails to prove the material allegations of the complaint.



THIRD. The Defendant in Error was guilty of contributory negligence.

FOURTH. The Defendant in Error assumed the risk.

FIFTH. The Court erred in refusing to give certain instructions requested on the part of the Plaintiff in Error.

We will attempt in the limited time given us to discuss these propositions in their order.

### I.

DOES THE COMPLAINT STATE A CAUSE OF ACTION?

The first point made by Counsel for Plaintiff In Error is that the complaint fails to state a cause of action. In this connection Counsel for Plaintiff in Error has set up a straw man, and then proceeded to knock him to pieces, bit by bit.

He has assumed that the cause of action of the Defendant in Error, if any he has, is that of putting an inexperienced employee at dangerous work without giving him sufficient instruction or warning, and then proceeds to argue that the complaint does not state that the Defendant in Error was an inexperienced workman. That it does not state that his inexperience and ignorance of the dangers attending the work was known to the Plaintiff in Error. And that it fails to allege that the employee was set to work without instruction or warning of the danger of his employment.

A cause of action against the Plaintiff in Error based upon that theory of the case could have been pleaded and was established by an overwhelming preponderance of the evidence. But because that appears in the evidence, the De-

fendant in Error is not restricted to that cause of action alone. The complaint in substance alleges that the Plaintiff in Error constructed a lightning arrester in a defective manner in that it unnecessarily, carelessly and negligently placed the arms of the lightning arrester in too close proximity to the ground and to the wall of the sub-station building. That the so placing of the live arms of the lightning arrester rendered the place unnecessarily and unusually dangerous for *any* person who might go, or be required to go in the discharge of his duty in the vicinity of this lightning arrester. That the so placing of the lightning arrester created not an ordinary risk of the employment of the Defendant in Error but an extraordinary, an unusual risk and an unnecessary danger. That the unnecessary and extraordinary danger created by the method of this construction was unknown to Defendant in Error and could not be known to a person of the knowledge, experience and understanding of the Defendant in Error. That in the discharge of his duty he came in such close proximity to one of the arms of the arrester, charged with a dangerous amount of electricity, and that he received the injuries of which he complains, the results of which injuries are set forth in the complaint.

There is no more familiar principle in the law than the statement that it is the duty of the employer to furnish his employee a safe place to work.

The statement of the law, which is peculiarly applicable in this case does not mean, nor does counsel claim it to mean that a place must be absolutely safe, because in some employments that is an impossibility. What is meant by the statement is that when the employer has used all reasonable



care and diligence, or as stated by some of the Courts, when he has used such care and diligence as a prudent man under like circumstances would have used, he has fulfilled his duty and has furnished a place which is safe within the meaning of the law. It is hardly necessary to cite authorities in support of this proposition but Counsel calls the Court's attention to the following authorities:

*Lewis vs. Seifert*, 116 Pa. 628.

*Nadau vs. Lumber Co.*, 76 Wis. 120.

*Portance vs. Lehigh C. Co.*, 101 Wis. 574.

*Elledge vs. R. R. Co.*, 100 Cal. 289; 34 Pac. 720.

*Coombs vs. Cordage Co.*, 102 Mass. 572.

*Kirkpatrick vs. R. R.*, 79 N. Y. 245.

*Union Pac. Ry. Co. vs. Jarvi*, 69 Fed 65.

*Western Coal Min. Co. vs. Ingram*, 70 Fed. 217.

*Railroad Co. vs. Braugh*, 149 U. S. 368.

*Mather vs. Rillston*, 156 U. S. 391.

It is true that the word "safe" as used in these decisions, and they are too numerous to mention, does not mean a place so made and guarded as to exclude all possibility of danger. It is also true that many employments are in and of themselves dangerous, and it is said in the case of *Martin vs. Des Moines Edison Light Company*, 106 N. W. at page 361,

"that it involves no paradox to say that a place of danger may be safe in the proper sense of the word, *but*

*it is safe only when all safeguards and precautions which ordinary experience, prudence and foresight would suggest have been taken to prevent injury to the employee while he is performing the service which he undertakes to perform."*

The proposition of law means that it is the duty of the master not to expose the servant to any injury which may be reasonably anticipated and guarded against.

This is a positive duty and non-delegable. This applies to places where the servant is expected to work and the instrumentalities furnished by the master for the performance of the work. The servant takes upon himself only the risks necessarily incident to the employment, and even then he will not be held to have assumed the risk where the danger is latent and known to the master but not known to, nor by the use of proper diligence discoverable by the servant. It is said in the case last referred to and numerous other authorities cited in that case, and is clearly the law, that

"in no case does he (the servant) take on himself risks that arise by reason of neglect on the part of the master unless they are known to him or by the use of proper diligence are discoverable by him."

There is another proposition of law, or possibly more properly speaking, a proposition involved in this statement of the law, which is applicable here, and the proposition is that where the danger is great, the duty of the employer is commensurate with that danger.

As applied to electrical cases, in the last case cited it has been said at page 365,



“it is sufficient for us to say that the widely extended use of electricity generally is a development of very recent years and the law has not yet become fully settled as to the duties, liabilities and remedies in reference thereto. It seems, however, that so far as expressed there is substantial unity in the holding that where one undertakes to produce or deal with a power of such tremendous potency so concealed from ordinary observation, so laden with death dealing possibilities and as yet imperfectly understood and controlled, reasonable care for the protection of those who may rightfully come within the zone of danger requires at his hands, the highest degree of prudence and watchfulness proportioned to the magnitude and subtlety of the peril to be guarded against,”

and in this connection the following authorities are cited :

*Barto vs. Telephone Company*, 126 Ia. 244.

*Scott vs. Iowa Tel. Co.*, 126 Ia. 527.

*Herbert vs. Lake Charles Co.*, 35 So. 731.

*Mitchell vs. Raleigh Elec. Co.*, 129 S. C. 166.

*McLaughlin vs. Louisville Elec. Co.*, 37 S. W. 851.

*Croswell on Electricity*, Sec. 234.

*Brown vs. Edison Co.*, 90 Md. 400.

*Keasby on Electric Wires*, Sec. 245.

*City R. R. Co. vs. Conery*, 61 Ark. 381.

*Cook vs. Wilmington*, 9 Houst (Del) 306.

*Ahern vs. Oregon Tel Co.*, 24 Ore. 276.

*Wolsper vs. L. L. & P. Co.*, 86 N. Y. Sup. 845.

Under all ordinary circumstances the question of how well this duty has been performed is for the jury. *Martin vs. Des Moines Edison Light Company*, *supra*.

Applying this principle to the case at bar, can it be said

as a matter of law, that the Plaintiff in Error was not guilty of negligence in the construction of the lightning arrester from which the Defendant in Error received the injuries complained of. The lightning arrester was constructed so that the arms next to the sub-station were connected with wires charged with 55,000 volts of electricity. They were constructed within five feet, nine inches of the ground and within three and one-half feet of the Fairview sub-station. According to the expert testimony, the amount of electricity that could be drawn from one of these arms to the ground was 33,000 volts. When we consider that under certain circumstances 110 volts of electricity will kill a man, that 500 volts will usually kill, and that 1700 volts is the amount of electricity used by the authorities in the State of New York in the execution of criminals, the fact that the Plaintiff in Error placed within the reach of any person who might go near that lightning arrester and placed within the reach of the employees of the Plaintiff in error that amount of electricity when the elevation of these arms but a few feet as was done at the Wonder station would have made the structure reasonably safe, shocks the sense of all just men and amounts not only to negligence in the law, but as one of the witnesses characterized it, "criminal negligence."

It may be said that the Plaintiff in Error did not know that Sheaff would come in contact with the live arm of the arrester but that can be no excuse in this case for the law is well settled that it was the duty of the Plaintiff in Error to anticipate such a contingency.

In the case of *Colusa Parrot Mining and Smelting Com-*



*pany vs. Monohan*, 162 Fed. page 276, this Court expressed the true principles governing a situation such as this in the following language :

“In the present case it appears as has been said, the plaintiff was a common laborer knowing nothing of electrical work and unfamiliar with the perils attending it. In sending him upon the roof to work, the defendant was bound to know that he might come in contact with its wire.” (Citing authorities.)

“And it was bound by the plainest principles of law and justice to properly insulate its wire to the end that those likely to come in contact with it should not be injured.” (Citing authorities.)

“There is nothing in the suggestion that the defendant’s negligence was not the proximate cause of the plaintiff’s injury.”

The proximate cause, as said by the Supreme Court in *Ins. Co. vs. Boone*, 95 U. S. 130, 24 Law Ed. 395, is an efficient cause.

Applying these principles to the case at bar, it follows, that when the Plaintiff in Error constructed its lightning arrester within five feet, nine inches of the ground, it must be held to have been bound to know that any person called upon to work in the vicinity of that lightning arrester was likely to come in contact with one of the horns of the lightning arrester. If the employee was unacquainted with, and ignorant of the danger attending the use of electricity and did not know that the horn was charged with electricity, he was liable to come in such close proximity to the horn as to

receive a shock if his work called him to go past that horn; if he were an experienced electrician, familiar with the danger attending electrical work, if he knew that the horn of the lightning arrester was connected with the high tension power line still by inadvertence or in a moment of forgetfulness caused by the exigencies of his present work, he might come in contact with that horn, or in such close proximity to it as to receive a shock. While a person having the knowledge of an electrician might not be able to recover at law because of his knowledge, and because he elected to continue in the employment, knowing the danger attending the construction, still that would not make the structure less dangerous nor make it a safe place to work. If the employee was not entitled to recover it would be because he assumed not the ordinary risks of his employment, but assumed the extraordinary risks as well. The true principle underlying the law that it is the duty of the employer to furnish a reasonably safe place to work rests upon the doctrine that he must use ordinary care to prevent his employees being injured. Still applying the language of the case last cited, to the present discussion, it is the law, that the Plaintiff in Error was bound by the plainest principles of law and justice to elevate the live horns of the arrester so that its employees were not likely to come in contact with them.

It is urged in the brief of Counsel for Plaintiff in Error, that the complaint fails to state that the Defendant in Error was unfamiliar with and ignorant of the dangers of working near and around this arrester. True, that is not the exact language in which Counsel couches his argument, but that is



the idea. We contend that that is not the proper construction to be placed upon the complaint, but even if it were, that would not render the complaint demurrable upon the ground that it did not state facts sufficient to constitute a cause of action. The risks assumed by an employee is the ordinary risk attending his employment. This principle rests upon contract. The master contracts to use all reasonable care, to furnish the employee with a reasonably safe place in which to work, and reasonably safe appliances with which to perform that work. The servant assumes all of the ordinary dangers attending that employment. The master though he furnish reasonably safe appliances cannot escape liability, if the work is dangerous and he knows that the employee is inexperienced and unfamiliar with the work, and ignorant of the dangers attending the same and does not properly instruct or warn the servant. Upon the other hand the servant may be held to have assumed the risk, even though the place were not a safe place in which to work, or the instrumentalities furnished him were not safe, as the law defines that term. Tho the risk was an extraordinary one, still if the servant appreciated the danger and knew the master was negligent, but elected to proceed with the work, he would then be held, in law, to have assumed such extraordinary risks. The ordinary risks which a servant always assumes are the risks attending the doing of a certain work where the master has fulfilled his duty, by furnishing a reasonably safe place in which to work and reasonably safe appliances. That defense need not be pleaded, but the defense of assumption of extraordinary risks must always be plead, and proved by the master, by a fair preponderance of

the evidence. Therefore, if the complaint alleges that the master negligently and carelessly constructed and maintained a lightning arrester in a defective condition, and the defects are set forth with sufficient particularity; that these defects created an unsafe place in which to work and that by reason of these defects the servant was injured, the complaint has stated a cause of action. The defenses thereto may be several; the master may deny any negligence; he may also confess and avoid; he may admit that he was careless and negligent, and avoid by alleging and proving that the servant knew that his carelessness and negligence created an unusual and unreasonable risk and extraordinary danger, but that the servant with full knowledge of the risk and danger elected to remain in his employ. This is the affirmative defense of assumption of risk. Without taking the time in this brief to discuss the attempted plea of assumption of risk, because that discussion is rendered unnecessary by the verdict of the jury, still we suggest that the defendant has not pleaded assumption of risk; he may also defend by a plea of contributory negligence. That is also a plea in the nature of confession and avoidance. It admits that the employer was negligent, but by way of avoidance says, so was the employee, and the negligence of the employee was the proximate cause of the injury or proximately contributed thereto. Again without taking the time to discuss the pleadings of the answer of the Plaintiff in Error, it is suggested that the Plaintiff in Error has not pleaded in this case contributory negligence, for no facts are set forth by the defendant sufficient to constitute that defense. In sup-



port of these propositions, however, we cite the following authorities:

*Birsch vs. Citizens Electric Company*, 93 Pac. 920.

*Longere vs. Big Black Foot Mill Co.*, 99 Pac. 132.

*Kenney vs. Kennedy*, 99 Pac. 384.

*Konig vs. N. C. O. Ry.*, 36 Nev. 181.

As part of the strawman which counsel for the Plaintiff in Error is proceeding to knock to pieces bit by bit, Counsel says: The Defendant in Error was an experienced man and that the complaint alleges in substance that an experienced man, to-wit, an electrician's helper, was ordered to work near and around electrical wires; and then proceeds to state that "that would ordinarily be the place where an electrician's helper would work;" and the first thing such an employee would learn is the danger of coming in contact with electrical wires." He then draws the conclusion that no duty was therefore owed to the Defendant in Error.

Counsel completely overlooks the allegations of the complaint and he also overlooks the principals of law applicable to demurrers.

By demurring to the complaint he confesses for the sake of the demurrer, all of the allegations of the complaint which are properly pleaded. He confesses that the Defendant in Error was unfamiliar with the work of a journeyman lineman, and was unacquainted with and ignorant of the dangers incident to the work of a journeyman lineman and electrician, upon or near wires or apparatus carrying electrical current of high voltage and potential energy. He ad-

mits that by reason of the construction, the place was a dangerous place in which to work. He admits that said dangers and dangerous conditions were wholly unknown to the Defendant in Error; and that Defendant in Error was ignorant of the same.

Without conceding that it was necessary to allege in the complaint that the Defendant in Error was unfamiliar with the work of a journeyman lineman and electrician, and also unacquainted with and ignorant of the dangers incident to the work of a journeyman lineman and electrician upon or near wires or apparatus carrying electrical currents of high voltage, still we insist that the admission of that fact by the Plaintiff in Error destroys completely the force of his argument.

The effect of this contention of counsel is that the Court, as a matter of law, will take judicial notice that the place in which an electricians helper would ordinarily be called upon to work would be near and around electrical wires; and that the first thing he would learn would be the danger of coming in contact with electrical wires. This certainly is not a matter of which the Court will take judicial cognizance.

It is difficult to understand what Counsel means by the expression "electrical wires." If he means wires which are intended at some future time to carry electrical currents, then that can be admitted, altho the evidence in his case does not bear out that contention. But if he means by the use of the words "electrical wires," wires charged with a high and dangerous amount of electrical current, we challenge his



conclusion. If the injury had occurred by reason of the fact that the Defendant in Error was injured in moving a transformer, or if the injury was occasioned by a wire which the Defendant in Error was assisting to place on a pole or something of that nature, then the position of Counsel might find support, not in a demurrer, but in the evidence in the case. Neither is his contention that the first thing an electrician's helper should learn is the danger of coming in contact with electrical wires, if he means the danger of coming in contact with wires charged with a dangerous amount of electrical current. If the Court can take judicial knowledge of these matters, it will take knowledge of the fact that the work of installing electrical apparatus is divided among certain workmen, that a common laborer or an electrician's helper is never expected to work upon, nor does he contract to work upon or around wires charged with electricity. That part of the work is performed by journeyman linemen and electricians. It will also take knowledge of the further fact, which by the way appears in the evidence, that no person, be he a journeyman lineman or electrician is expected to or contracts to work around a wire charged with a voltage in excess of 2,500 volts, and indeed it is legal negligence for an employer to require an employee of any knowledge or capacity to work upon or around a wire charged with a voltage as great as 2,500 volts. Counsel insists that the Plaintiff in Error owed no duty, other than to provide for *all* his employees a reasonably safe place to work; that proposition we concede, if it is limited to those employees who are required to go into the place for work, but it is foolishness to assert that an employee engaged to perform service in Lundy,

California, where the electrical current was generated, could recover, if he went to Fairview, Nevada, outside of the scope of his employment, and voluntarily went in close proximity to this lightning arrester, and thereby received an injury. The place would have been as dangerous to him if he had the same knowledge, as it was to the Defendant in Error. But if the master owed no duty to the employee from Lundy, California, he could not recover.

Counsel next discusses the proposition of open, obvious and patent dangers and again asks the Court, tho he has confessed in his demurrer, that the Defendant in Error was ignorant of the dangers and dangerous conditions surrounding the place where he was ordered to work, to take judicial knowledge that this danger was open, obvious and patent; this the court certainly can not do. As was observed by the lower Court in the decision on motion for a new trial, Page 33 of the transcript, "Cases of this kind differ from those which have been cited where the danger was open and apparent to one in the exercise of his ordinary senses. A live wire, or a live pipe, such as we have in this case is not like an opening in a floor, or a rapidly revolving wheel, which people may see and avoid. A live wire is quite as innocent in appearance as a dead one, it gives no warning before it delivers the fatal shock."

This observation of the Court is a true statement of the facts concerning electrical arms, and if the Court will take judicial notice of anything in this case, it will take judicial notice of the fact that the danger created by an electrical wire is not obvious or apparent, by the exercise of the senses



but as was said in the case of *Martin vs. Des Moines Edison Light Co.*, 106 N. W. at Page 365, and in the numerous cases cited therein, is a danger that is concealed from ordinary observation, is so laden with death-dealing possibilities and so imperfectly understood and controlled, that reasonable care for the protection of those who may likely come within the zone of danger requires at the hands of a master, a degree of prudence and watchfulness proportioned to the magnitude and subtlety of the peril to be guarded against.

By parenthesis permit us in this connection to observe, that the illustration of counsel with respect to his rattle snakes is unfortunate indeed, because if the Court is dipping into judicial knowledge, it will take cognizance of the fact that the reptile who, according to Biblical History, tempted Eve to eat of the apple of *knowledge*, always gives warning before it delivers the fatal shock, and permit us to further observe that if the observations of Counsel for the Plaintiff in Error can have any force or effect they are and must be addressed to the defense of contributory negligence alone, and must rest in the proof and not in the pleadings.

Counsel next insists that it is not shown in the complaint how the Defendant in Error happened to come into close proximity to, or in contact with the wire, from which he received his injuries; again by parenthesis permit us to observe that the complaint does not allege that he came in close proximity to or in contact with a wire, and the evidence in the case does not show that he came in close proximity to a wire. What is alleged is that he came in such close proximity to or in contact with one of the arms of the light-

ning arrester and the evidence shows that this arm was a galvanized iron pipe. But the mistake which Counsel makes is that he is asking the Defendant in Error to plead matters of evidence and not the ultimate fact, and we are convinced that had we plead evidentiary matters and not the ultimate fact, the astute gentleman, representing the Plaintiff in Error, would rake us over the coals for so pleading, as he is now attempting so to do for not pleading evidentiary facts, but possibly with better success.

The cases cited by Counsel in support of his different propositions are not applicable to the case at bar, but permit us to say that if Counsel can get any comfort out of the United States Supreme Court decision which he cites, *Washington, etc., vs. McDad*, 135 U. S. 569, he is entitled to that consolation; if we read the case aright, it is decidedly against Counsel, for it lays down in unequivocal language the principle that individuals and corporations are bound to use all reasonable care and prudence for the safety of those in their service, by providing them with machinery reasonably safe and suitable for the use of the latter, and if the master fails in this duty of precaution and care, he is responsible for the injury thru the defect of machinery which is known or ought to have been known to him and is unknown to the employee or servant; and many of the other cases cited by counsel are just as unfortunate for him as the one above referred to.

Counsel in his brief makes the statement more than once that the alleged negligence in placing the live arms of the arrester too near the ground and in too close proximity to



the transformer station was a mere condition. What idea he intends to convey by that statement is more than we are able to determine. Every unsafe place creates a *condition* and it is the condition of the place which makes it safe or unsafe and if the master in violation of his duty to the servant creates a *condition* which makes a place unsafe, he is liable under "the plainest principals of law and justice," for any injury the servant may sustain by reason of the *condition* so created.

Answering the next paragraph of counsel's brief we think it sufficient to say that if we were to concede that the work of a common laborer or electrician's helper was in itself essentially dangerous, which confession we do not make, still, if it were dangerous work the master had no right in law or justice by the construction of its apparatus, to unreasonably increase the danger and hazard, but upon the other hand, the very fact that the work was dangerous required that the master should use all reasonable means commensurate with the danger incurred in making it as safe a place as possible in which to work.

Counsel's fifth point is that no facts are alleged in the complaint showing a casual connection between the alleged negligence and the injury, and then proceeds to discuss paragraph six of the complaint; that paragraph is a description of the injuries and burns received by the Defendant in Error, caused by the passing of the electrical current through him to the ground. Those were simply the results. The casual connection is shown by the allegations of negligent construction which created an unsafe place to work, and the al-

legations which show that the Defendant in Error was injured by coming in such close proximity to or in contact with the live arm of the lightning arrester, carelessly and negligently placed by the Defendant in Error. Had the Plaintiff in Error used reasonable care for the safety of its employees by elevating the live arm of the lightning arrester a few feet further from the ground, or had he as is observed by the trial Court on motion for a new trial, built a board fence from the frame of the arrester to the corner of the sub-station building, this injury would and could not have been received by the Defendant in Error. The dangerous construction, and the sending of the Defendant in Error to work at the place where he was injured was the efficient cause of the injuries and in the law was the proximate cause of the injuries. That point is effectively disposed of by this Court in the statement found in the case of *Colusa Parrot Mining and Smelting Co. vs. Monohan*, 162 Federal at page 280, in the following language:

“There is nothing in the suggestion that the defendant’s negligence was not the proximate cause of the Plaintiff’s injury. The proximate cause as said by the Supreme Court in *Insurance Co. vs. Eoone*, 95 U. S. 130, is the efficient cause.

See Also *Konig vs. N. C. O. Ry.*, 36 Nev. at pages 211-12-13 and 14.

The citations made by Counsel for Plaintiff in Error under this phase of his argument are entirely inapplicable to the case at bar. Of the ten cases Counsel cites, only three of the cases cited were decided upon the pleadings, four of the cases are cases in which the recovery sought was denied on



the ground that the negligence complained of was negligence of a fellow workman. Three of the cases are cases growing out of the defense of contributory negligence and have no reference whatever to the matter of pleading. The case of *Prokop vs. Gulf, etc.*, 79 S. W. page 101, Counsel for Defendant in Error will reserve for oral discussion, but sufficient to say that the facts alleged in that case and in the case of *Smith vs. Butner* are not applicable to the case at bar.

The sixth point made by Counsel for Plaintiff in Error is

“that it is impossible to determine from the complaint whether the employee came in contact with the live wire or not, likewise it cannot be determined whether he received his injury from coming into close proximity to the wire.”

Counsel then proceeds to argue that certainty is one of the main requirements in pleading a cause of action, and that it was highly important that the Plaintiff in Error should know whether it was claimed that the Defendant in Error received his injuries from coming in close proximity to the wire, or by coming in contact with it. In support of this proposition Counsel urges that no person of average intelligence would be permitted to say that he did not know of the danger of coming into actual contact with a live wire, but confesses that the rule is different where actual contact is not relied on, but where it is claimed that the electricity jumped from the wire to the body of the Plaintiff. For this reason he asserts that the complaint should have been certain in its averment in this regard. He then makes the statement that there is no evidence as to whether the Plain-

tiff received his injuries by contact or otherwise. We will reserve the matter of evidence with respect to this feature of the case for discussion under its proper head.

As to the matter of pleading, it is sufficient to say that the phase of the demurrer Counsel is discussing, is that the complaint does not state a cause of action, not that the complaint is ambiguous or uncertain upon the question as to whether Defendant in Error received his injuries from coming in contact with the live wire or from electricity jumping from a live wire to his person.

It will be observed that Counsel for Plaintiff in Error interposed a demurrer upon the ground of ambiguity and uncertainty, but did not make this phase of the pleadings one of the grounds of his demurrer. If we were to concede that the complaint was uncertain in this particular, the law clearly is that the Defendant waived that uncertainty by not demurring thereto on that ground. If the complaint was otherwise sufficient, that allegation could be proved upon the trial by showing either that the injury was received by coming in contact with the wire, or by showing that the injury was received by the electricity jumping from the wire to the person of the Defendant in Error.

We admit that there is a distinction made by some cases, none of which, however, have been cited by Counsel for Plaintiff in Error in the brief furnished us, between the liability of the master, created by the servant coming into contact with the live wire, and the liability created by the servant having received his injury from electricity, which jumped from the live wire to him. By way of parenthesis,



however, permit us to remark that the distinction is not the one made by the Counsel for Plaintiff in Error but refers alone to the proposition of contributory negligence.

In arguing this phase of the case, Counsel has assumed as a matter of fact that Sheaff, the Defendant in Error, knew that that wire was a wire charged with a high voltage of electricity, and then proceeds to argue that if he came in contact with it, he will not be heard to say that he did not know of the danger of coming in contact with the live wire.

As has been previously pointed out, the instrumentality from which Sheaff received his injury was not a wire. It had none of the characteristics usually associated with the carrying of electricity. It was a galvanized iron pipe bent somewhat in the shape of the letter "L," and the evidence is undisputed that Sheaff did not know that that pipe was charged with electricity. We will discuss this phase later on under the head of evidence.

The objection to the complaint covered by the sixth subdivision of the first article of Plaintiff in Error's Brief, is not an objection that could be addressed to the sufficiency of the complaint, but an objection, if any, that should have been taken advantage of by way of demurrer for uncertainty.

## II.

### DOES THE EVIDENCE PROVE THE MATERIAL ALLEGATIONS OF THE COMPLAINT?

Before entering upon the discussion of this phase of the case, it is well for us to observe that the Statutes of the State of Nevada, the State in which the injury occurred and

in which this case was tried, provides that "all questions of negligence and contributory negligence shall be for the jury." Revised Statutes, Sec. 5651, and the Federal Judiciary Act provides "that the laws of the several states, except where the Constitution, Treaties or Statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at law in Courts of the United States in cases where they apply." U. S. Revised Statutes, Sec. 721, Judiciary Act. Sec 34, 1 Stat. at L. 92.

The jury having found by its verdict that the Plaintiff in Error was guilty of negligence in the construction of the lightning arrester in question, and that its method of construction created an unsafe place in which to work and was guilty of negligence in sending Defendant in Error to work in an unsafe place; that Defendant in Error was not guilty of contributory negligence and did not assume the risk, that, in our opinion, is an end of this case unless errors of law occurred upon the trial sufficient to reverse the case.

However, out of an abundance of caution, we will call the Court's attention to the salient points of the evidence in the case.

It appears from the evidence that the Defendant in Error was employed by the Plaintiff in Error on or about the 10th day of April, 1911. He was employed as a common laborer to dig holes and help in general with the construction of a spur electrical line running from the main line of Plaintiff in Error to the Fairview mines in Fairview, Nevada.

The first work assigned Defendant in Error was that of gathering together some insulators and other material and



assisting in preparing the same for shipment from Hawthorne, Nevada, to Fallon, Nevada. He was then engaged in digging holes and assisting in setting poles intended to carry the wires from the main line to the sub-station at Fairview. Because of his magnificent physique and superior strength he was later assigned to the duty of "bull-ringing" or "bucking" a telephone wire from the reel-wagon, carrying the wire used in the construction of the electrical line and telephone line, which telephone line was being constructed parallel with and about thirty feet from the power line. This work consisted in pulling the telephone wire, as it came from the reel, across the intervening space between the poles intended to carry the power line and the poles intended to carry the telephone line. He afterwards assisted in laying the wires and tying them to the insulators. When the work of construction was completed, he was assigned the duty of assisting Mr. Halpenny, the electrician in charge of the construction of installing the apparatus in the sub-stations at Fairview and Wonder, Nevada. His first work in that respect consisted in shifting, by the use of rollers and pinch-bars, large transformers to the place where Mr. Halpenny directed. During this time no electricity was coming over the wires of the Plaintiff in Error. Subsequently he assisted Mr. Halpenny in drying out these transformers. In this work electrical current was used. This work was performed under the direct supervision of the electrician and consisted of throwing a switch, disconnecting the electricity from the coils used in drying out the transformers, examining a thermometer suspended inside of the transformers to

determine the heat therein, and again throwing the switch when required, to connect the current of electricity with the coils. There is evidence also in the case to show that he assisted in soldering and taping joints, the tape being used for insulating the joints made in the wires inside of the transformer house. The evidence shows that at the time this work was being done no electricity or electrical current was passing through or over its wires or into the sub-station. Subsequently, at the request of Mr. Halpenny, he constructed a line from the power station at Wonder to the mill at Wonder. His work there consisted in digging holes, setting the poles and stringing the wires. No power was passing over this line while he worked upon it. The connections of this line with the power line going out of the sub-station at Wonder were all made by Mr. Halpenny. The evidence shows that he assisted Mr. Halpenny in constructing a lightning arrester at Wonder, Nevada, which lightning arrester was similar in design to the one at Fairview, where he received his injuries, but differed in this respect that it was erected to one side of the power line, and the horns of the arrester, both live and dead, were elevated some three or four feet higher than were the horns of the lightning arrester constructed at Fairview. The evidence further discloses that at the time he worked on the arrester at Wonder, Nevada, it was not connected with the high power line, and that the connections which were afterwards made, were made by Mr. Halpenny. The evidence further shows, without contradiction, that the Defendant in Error was unfamiliar with electricity and unacquainted with and ignorant of the dangers attending the working around or in



the vicinity of live wires. That is the testimony of the Plaintiff himself, and Sheaff further testified that Mr. Halpenny, in the conversations that he had with him, never made any explanations to him respecting electricity, or how it worked, or what, if any, were the dangers attending it. These are admitted facts in the case, because Mr. Halpenny was upon the witness stand as a witness for the Plaintiff in Error and failed to deny a single statement of the Plaintiff with respect to these matters. The evidence further shows that the Defendant in Error did not participate in the construction of the lightning arrester, on which he was injured, further than in carrying some of the materials to the place and in helping bore some of the holes in the frame upon which the lightning arrester was constructed, and that he was absent when the lightning arrester was erected and when it was attached to the power line.

He further testified that he understood that this apparatus was intended only for the purpose of carrying off lightning which might strike the line, and that if he had seen that the live arms, which by the way, consisted of iron pipe, were connected with the high power line, he would not have known that it was dangerous to come into contact with one of these arms. This testimony is absolutely uncontradicted, and if it had not been the truth, Mr. Halpenny was in a position to have contradicted the Defendant in Error, if he had ever made any explanation to the Defendant in Error which would have furnished him directly or indirectly with this or any other knowledge respecting electricity, he was in a position to have denied, if not the direct testimony of Sheaff, the inferences to be drawn therefrom, but in this connec-

tion permit us to call the attention of the court to the fact that the truth of the statements by the Defendant in Error are corroborated by the testimony of Mr. Halpenny, and the ignorance of the Defendant in Error of the danger attending the coming in contact with a wire charged with electricity clearly appears in Mr. Halpenny's testimony, for Mr. Halpenny in an attempt to show that he had warned Sheaff, testified that on several occasions when they were working in the sub-station at Wonder and at Fairview, he repeatedly said to Sheaff, when he saw him going toward a live wire, "Look out, Sheaff, that wire is hot, or that wire is alive." See transcript, page 451, folio 479 and 480, and Transcript, page 481, Folio 558 and 559. This testimony not only corroborates Sheaff's statement of his ignorance, but also is the strongest possible evidence that the Company's representative actually knew and appreciated that the Defendant in Error was inexperienced and insensible and ignorant of the danger of coming in contact with a live wire.

The evidence discloses that the lightning arrester at Fairview, Nevada, was constructed by Mr. Greenleaf, Mr. Halpenny, Mr. Lee Campbell, Mr. Herring, and a carpenter; that Mr. Greenleaf was the Plaintiff in Error's superintendent of construction, that Mr. Halpenny was the electrician in charge of construction and that Mr. Campbell and Herring were journeyman linemen and electrical workers. That the live arms of the lightning arrester were constructed five feet nine inches from the ground. That when the structure was completed Mr. Campbell remarked to and in the presence of the agents of the Company that it was criminal neg-



ligence to construct a lightning arrester of that kind with the arms in such close proximity to the ground. And the testimony of the Defendant in Error's witnesses, who are not employees now of the Company and who had no interest in this case, was to the effect that both Mr. Greenleaf, superintendent of construction, and Mr. Halpenny, the electrician in charge of construction, admitted that the structure was unnecessarily dangerous, and Mr. Greenleaf, according to the testimony of these disinterested witnesses, expressed the expectation that some one would be injured by the arrester, but he and Mr. Halpenny laid the blame therefor on Mr. Poole, their superior officer.

The testimony of Prof. Scrugham, the expert witness for the Defendant in Error, was to the effect that the construction was exceedingly dangerous, not the usual and customary construction, not the usual and customary height, that in the usual construction the live arms of the arrester are put at least nine or ten feet from the ground, and that they are put that high for the purpose of safety. That the danger was occasioned by reason of the fact that the live ends of the arrester were too near the ground, and that the structure would have been a safe structure only if the arms had been elevated at least nine or ten feet from the ground. That under normal conditions the electricity would jump an inch and three-quarters to a person from a line carrying 32,000 to 33,000 volts, and under abnormal conditions it might jump three or four inches, and he testified by abnormal conditions he meant a voltage higher than normal between the line and the ground.

(Pages 294, 295, and 296, folio 79, 80, 82, 83.)

Mr. Campbell, with many years experience as an electrical worker and journeyman lineman, testified that the usual construction was to place the live arms of the arrester from seven to twelve feet from the ground, and he had never before seen a lightning arrester of this character constructed so that the live ends of the lightning arrester were as close to the ground as this one. (Pages 256, 258, 259, fols. 405, 410, and 411.)

True, there is testimony on the part of the officers of the Plaintiff in Error, the very persons who were directly responsible for the construction of the lightning arrester, that the lightning arrester was safer as it was constructed than it would have been had the live arms been placed at a greater elevation.

The most that can be said with reference to this testimony is that it created a conflict in the evidence, as to whether the place was a safe place to work. The jury having determined that question adversely to the Plaintiff in Error, that is an end of the controversy, but it may be observed that that testimony so violated every consideration of reason that had the jury accepted it and acted upon it, the verdict so rendered would have been a travesty in the law.

The evidence further discloses that at the time Mr. Halpenny, Mr. Greenleaf, Mr. Campbell and Mr. Herring left Fairview, Nevada, the lightning arrester was not complete. That in order to complete the lightning arrester, it was necessary to place in the ground under the dead arms of the lightning arrester cement blocks to which one end of the



dead arms of the lightning arrester were to be fastened and to the other end of which the ground wire was to be connected. The digging of the holes, the preparation of the blocks by placing the clamps on either end and the placing of the blocks in the ground under the dead arms of the lightning arrester was the work which the Plaintiff in Error directed Sheaff to perform. (Page 164, 165, fol. 178, 180.)

The evidence further discloses that on the morning of the 18th of July on the order of Mr. Halpenny, the electrician in charge of the construction, Sheaff proceeded from Wonder to Fairview to do this work. That he went to Fairview, ordered the clamps made as directed by Mr. Halpenny, proceeded to the sub-station, obtained a pick and shovel, passed around the south side of the sub-station building, took down two wires of the fence enclosing the lightning arrester and the switch and went directly to the south horn of the lightning arrester and dug a hole under that horn. He then proceeded to the next horn, that being the middle horn and closest to the switch. After digging the hole under that horn, he went to the north horn of the lightning arrester and dug a hole under that horn. After completing that hole, he started to go and get one of the cement blocks to place in the hole. The block was on the side of the building. He intended, according to the evidence, to go past the lightning arrester on the north side and between the live horns of the lightning arrester and the sub-station building in order to get the block. When he arrived at a point just opposite the end of the live horn of the lightning arrester on the north side and just before he reached the sub-station building, he

received the shock which resulted in the injuries complained of. (Page 110, 111, fol. 29, 30, 31, 32, 33.)

The evidence discloses that at least 33,000 volts of electricity passed through his body to the ground. The evidence further discloses that the arms of this arrester were constructed of one quarter-inch iron pipe with a coupling on the end. The coupling was about three-sixteenths of an inch thick and made the size of the pipe three-sixteenths of an inch larger in diameter than the main portion of the pipe.

The evidence discloses that Sheaff received a discharge of electricity from the end of the pipe on which there was this coupling, for when the pipe was examined there was found on the coupling covering the end of the pipe a small spot about twice the size of the point of a lead pencil. That spot was found on the outer and lower side of the coupling. The electricians who examined it said it was a spot from which an arc had been drawn, and beneath that spot was found upon the ground, marks which indicated that a man had fallen at that point. That is the point where Sheaff testified that he was lying when he regained consciousness after having received the shock. (Fol. 166, also P. 395, 396, 397, fols. 339, 330, 333.) From that point Sheaff crawled along the side of the building, around the three horns of the lightning arrester and outside of the enclosure at the point where he entered. This fact is significant upon the question as to whether that was a safe construction and whether the construction rendered the place a safe place to work because in passing between the building and the lightning arrester upon his knees, Sheaff did not and could not receive a shock.



Had the live arms of the lightning arrester been elevated even seven feet from the ground, a man of the height of Sheaff, which the evidence discloses was six feet 6 and 3-16 inches tall, could not possibly have received a discharge from the live end of the lightning arrester in going to the point where Sheaff was injured. (Fol. 32.)

The evidence further discloses that the ground from where Defendant in Error dug the last hole to within a few feet of the gap in the enclosure made by Sheaff in taking down the wires to go in to work, around the side of the arrester between the arrester and the switch was rocky, precipitous and contained obstructions such as the piles of dirt taken out of the holes, loose rocks and earth and a guy wire running from about five feet high on the switch poles to the ground beneath the frame supporting the lightning arrester. (Fol. 29.)

The evidence further shows that the way in which Sheaff was going was ground level from within a few feet from the hole last dug by him, and smooth and had no obstructions from a point within a few feet from the hole to where the blocks he was after were lying. The direction taken by Sheaff was the direction any person ignorant of the dangers created by the construction of the lightning arrester would naturally take. (Pages 108 and 109, fols. 25, 26, 27, 28.)

The evidence establishes without contradiction, in fact Counsel for the Plaintiff in Error admits, that the live arm of the lightning arrester from which the Defendant in Error received the discharge of electricity was five feet nine inches from the ground.

(Fol. 386.) The coupling on the end of the pipe would reduce that somewhat, possibly three-thirty seconds of an inch. The bubble on the coupling indicating the place where the arc was drawn, however, was not upon the lowest point on the coupling but a little to the outer side from the center. Mr. Sheaff was measured in the shoes which he had on the day of the accident, which shoes, by the way, had not been worn since the day of the accident until he put them on for measurement. He was measured by the man in charge of the Bertillon measurements in the office of the State Police. The measurements showed that the highest point on the right side of the Defendant in Error where he received the discharge of electricity was five feet six and  $\frac{7}{8}$  inches from the ground. The highest point on his body where he received the discharge of electricity was five feet seven inches from the ground. That point was on the left shoulder near his neck. (Pages 381, 382, 383, fols. 305, 306, 309.)

The evidence shows without contradiction that Sheaff never stopped while he was going to get the block but was walking along in the ordinary way when he received the discharge of electricity. It is a physical fact, which we think the Court will take judicial knowledge of, that the shoulders of a person walking in the ordinary way do not rise and fall with his steps but that the leaning position of a man walking which would have the tendency to lower his shoulders is compensated for by the rise he makes on the foot resting upon the ground. This being so, it was an impossibility for Mr. Sheaff to have come in actual contact with the live horn of the arrester. The closest point that his body could have been to the arrester was an inch and seven-eighths from the



arm of the lightning arrester and presumably he was a greater distance than that from the live arm when he received the discharge. This apparent conflict with the evidence of Prof. Scrugham is accounted for by the fact that possibly and probably at the instant of the discharge of electricity there was a slight surge on the line and that the voltage between the live arm of the arrester and the ground was in excess of 32,000 or 33,000 volts at the instant Sheaff attempted to pass the arm of the arrester. The significant fact shown by this testimony is that Sheaff did not come in contact with the arm but only in such close proximity to the arm as to receive therefrom the discharge of electricity, so that Counsel's argument based upon contributory negligence, in Sheaff coming in contact with the live arm is absolutely destroyed by the evidence in the case. If it were the law, which we do not by any means admit, that the mere fact that Sheaff came in contact with the live arm would charge him with contributory negligence, still in view of what actually occurred, he cannot be charged with contributory negligence upon the score of having come in direct contact with the arm of the arrester charged with a dangerous amount of electricity.

The evidence then clearly demonstrates that the construction was dangerous; that the master did not use ordinary care in the construction of the lightning arrester; that the horns of the lightning arrester were not elevated the usual or customary distance from the ground; that the Plaintiff in Error knew that the lightning arrester was a dangerous contrivance; that the construction made the place where

Sheaff was ordered to work a dangerous place; that Plaintiff in Error knew that it was a dangerous place; that Sheaff was ignorant of the danger and that he received the injuries when in the discharge of his duty and when in the exercise of ordinary care. Thus the evidence supports all of the material allegations of the complaint.

In his Brief Counsel for the Plaintiff in Error insists most strenuously that the Defendant in Error was an experienced man and in his purported Statement of Facts set forth in great detail what he claims was his experience.

If we were to admit the truth of the entire statement of Counsel, we insist that it is not the province of the Court to draw from those facts as a conclusion of law the inferences Counsel seeks to have drawn, but that the question as to whether the Defendant in Error was so experienced as to have charged him with the assumption of risk or with contributory negligence was a question for the jury to determine from the entire evidence in the case and by its general verdict having determined that question adversely to the contention of the Plaintiff in Error, the Appellate Court ought not to reverse the judgment. Before the Appellate Court is justified in reversing the judgment on that ground it has to find as a matter of law that there was no evidence whatever in support of the verdict.

*Hayden vs. Ogden Savings Bank*, 158 Fed. 90.

*Omaha Water Co. vs. Schamel*, 147 Fed. 504.

*Gienn vs. Sumner*, 132 U. S. 157.

*Herencia vs. Gusman*, 219 U. S. 44.

*Duke vs. St. Louis & S. F. R. Co.*, 172 Fed. 684.



*Etna Idemnity Co., vs. J. R. Crowe, Coal Min. Co.,*  
154 Fed. 546.

*Boatmen's Bk. vs. Tower Bro. Co.,* 108 Fed. 806.

Counsel for Defendant in Error, however, challenges the accuracy of the Statement of Facts made by Counsel for Plaintiff in Error. The chief objection to the purported Statement of Facts made by Counsel for Plaintiff in Error is that he has taken isolated statements appearing in the evidence without showing their connections. To illustrate the point, Counsel is making, he calls the Court's attention to the statement found on page 11 of the Brief of Counsel for Plaintiff in Error as follows:

"He knew that there was such a thing as a cold wire—a dead wire—and he knew that there was such a thing as a live wire. He knew that a live wire was one carrying a current of electricity, and a dead wire was one not carrying a current of electricity. (fol. 108.) He knew there was electricity going through the lines to Tonopah, and he knew that it was being generated in large quantities for power and light. He also worked for the Desert Power & Mill Company in 1908, 1909, and part of 1910. It was part of the old Esmeralda Power plant. He worked there as *foreman* in the power house (fols. 109-110). While working there he was brought into connection with electrical generators or motors. They had two or three motors that ran pumps there."

Now let us compare that statement with the whole of the evidence as shown by the record. The Court, out of its experience, will know that this testimony was given in answer to questions propounded by an astute Counsel, and the

transcript is made up of his questions and the witnesses answers thereto,, and does not always convey the same impression as do the questions and answers, but however that may be. Note the underscoring of the word "foreman" about the middle of the page.

The transcript is as follows:

"After working eight months in that power plant I could not tell the difference between a hot wire and a cold wire. I don't think that I knew that a hot wire was one charged with electricity and a cold wire was one that wasn't. How could I tell the difference between a wire that was carrying electricity and a wire that was not? I knew that there was such a thing as a live wire. I knew a live wire was one carrying a current of electricity and I knew that a dead wire was one not carrying a current of electricity. I didn't know that electricity at high voltage was carried through that power plant, how high it was carried. I didn't know anything about what voltage it was carrying. I knew that there was electricity going through the line, going into Tonopah, and I knew it was being generated in large quantities for the use of power and light. I worked also with the Desert Power and Mill Company. I worked with the Desert Power and Mill Company in the years 1908 and 1909 and a part of 1910. The Desert Power and Mill Company was in Millers, Nevada. It was part of the old Esmeralda power plant, and the remaining part, I suppose was the Tonopah Mining Company's mill. I worked part of that time as foreman in a power house. *They were not making any electricky there in those years. The engines were all shut down and the place was in disuse.* While working for the Desert



Power and Mill Company, I was brought into connection with electric generators or motors. We had two or three motors that ran pumps there.” (fol. 108, 109 and 110..)

One of the ideas sought to be conveyed by Counsel for Plaintiff in Error was that the Defendant in Error in 1908 and 1909 and a part of 1910 was working in the capacity of “*Foreman of a power plant*” “and also that he was operating a generator.” The whole of the testimony taken together shows the fallacy of the idea sought to be conveyed. What the evidence does show is that in 1908 and 1909 and a part of 1910, he was working in what had once been the power house of the Esmeralda power plant. That he was working as *foreman* but at that time they were not generating any electricity there. The engines were all shut down and the place was in disuse as a generating plant. True, he said while working there he was brought in connection with electrical generators or motors.

The subsequent testimony shows, that he was not brought in connection with a generator. The word “generator” was a misuse of the term. What he was brought in connection with was motors, which were being used to pump water, and they were operated by simply throwing a switch, or, in his language, a lever. (fols. 109, 110, 111 and 112..)

The simple act of throwing a lever to connect the electricity with or to disconnect the electricity from the motor is the sum and substance of the experience that Sheaff had with electricity there. It is from that experience that Counsel asserts that Sheaff was an experienced man. If Coun-

sel's conclusions are sound, every person who turns on a switch to an electric light, or every woman who presses the button which connects the electricity with the motor of her sewing machine, her washing machine or vacuum cleaner or other electrical appliance, must be held to be acquainted with and sensible of the dangers attending working around electricity, a conclusion too absurd to need refutation.

Again we call the Court's attention, simply by way of illustration, to the Statement of Facts at page 13, under the head of folio 130 and 139. Take for instance the statement, "In 1908 they had a little steam engine that ran the generators to operate a crane." The idea sought to be conveyed is that the Defendant in Error ran the generator to operate the crane. The testimony is as follows. Speaking of the year 1907,

"I had to run the steam engine and had to handle the levers in order to operate the derrick. I had entire charge of that work, so far as running it. They did not have any electrical appliances there in 1907. They did in 1908. In 1908 they had a little steam engine that ran a generator to operate this motor on this crane. The electrician had charge of that steam engine and that generator. I didn't do any work on that. I didn't do any work at all around that steam engine or around that generator. I don't remember how the wires were carried from the generator to the motor. I don't think I ever knew. I was not present while the electrician was setting up the machinery there." (fols. 130 and 131.)

Now passing to the statement under the citation of Folio 139.



“He was running the power line from the main line to the Pacific Power Company’s station at Fairview.”

The statement found in Folio 139 is:

“I was running this line from the main line to the Pacific Power Company’s sub-station.”

That is an isolated statement found in the record, as given it conveys an entirely false impression, which false impression Counsel for Plaintiff in Error must have been aware of. The testimony of Sheaff at several other places, and the testimony of Lee Campbell and Clifton Herring, is to the effect that Sheaff was not running the line to the sub-station at Fairview, but that he was engaged upon that line simply in the capacity of a common laborer. His first work on that line was digging post holes and assisting in setting the poles in these holes. The next work was “bullringing or bucking” a telephone wire from the reelwagon to the telephone poles. He afterwards was taught how to use a pair of climbers and assisted other men in laying the wires and tying them to the insulators, but the wires were not connected with any electrical current whatever. That was work that any common laborer, if young, vigorous and spry, after being shown how, could do in a short time as well as an electrician. These are the principal things which show that Sheaff had knowledge of the operation of electricity and the terrible dangers attending its use.

If Counsel for Defendant in Error were to stop to point out all of the false inferences Counsel for Plaintiff in Error seeks to convey to the Court by his Statement of Facts, this Brief would be so extended that Counsel could not prepare

it in the five days given him to prepare and have printed his Brief. Suffice it to say that Counsel challenges the accuracy of practically every proposition made in the purported Statement of Facts as being an effort to create a false view of what the evidence in this case shows.

### III.

#### ASSUMPTION OF RISK

We admit that the Defendant in Error will be held to have assumed the ordinary risks of his employment but not the extraordinary risks. The proposition is clearly stated in the last edition of Labatt on Master and Servant, Vol. 3, Section 894, as follows:

“A proposition which has so frequently been enunciated by the Courts as to have become axiomatic is that, *prima facie*, a servant does not assume any risks which may be obviated by the exercise of reasonable care on the master's part. In other words, the abnormal, unusual or extraordinary risks which the servant does not assume as being incident to the work undertaken by him are those which would not have existed if the master had fulfilled his contractual duties.”

At Section 902, the author says:

“There is no exception to the rule that the violation by the master himself of any of the duties enumerated in the foregoing sections constitutes a cause of action in favor of a servant who is injured thereby. A *prima facie* right to indemnity exists, therefore, whether the master's culpability was, under the doctrine prevailing in the jurisdiction where the accident occurred, one ap-



pertaining to the performance of a duty belonging to the non-delegable class, or a mere detail of the work."

The question whether a risk is ordinary is a question of fact primarily for the jury.

Labatt on Master and Servant, Sec. 1169, last paragraph.

"A principle which has been formulated and applied so frequently as to have become axiomatic is that a servant is *prima facie* not chargeable with an assumption of extraordinary risks—risks, that is to say, which may be obviated by the exercise of reasonable care on the master's part."

Labatt on Master and Servant, Sec. 1178.

Reduced then to a working basis the principles are thoroughly established, first, that the servant assumes the ordinary risks of his employment. These risks which are incident to the employment, when the master has discharged his full duty in furnishing the servant with a safe place in which to work and with safe appliances with which to do his work, that for the purpose of a *prima facie* case, the servant does not assume the extraordinary risks, risks which may be obviated by the exercise of reasonable care on the master's part. If the evidence on the part of Plaintiff established the fact that the master has been negligent in constructing an appliance, and that appliance created an unsafe place to work, and that the servant was assigned to work in that place and was injured while working, the servant has made a *prima facie* case, entitling him to have the case submitted to the jury.

The defendant may defend on the ground of assumption

of risk, but in order to make that defense he must allege and prove by a preponderance of the evidence that the servant assumed the extraordinary risk. In order to charge the servant with having assumed an extraordinary risk, created by the negligence of the master, it is necessary to show in the defense that the extraordinary risk created by the master's negligence was known to and comprehended by the servant, and where the servant is chargeable with neither actual nor constructive knowledge and comprehension of the risk he will not be held to have assumed it.

The question as to whether Sheaff had actual knowledge of the extraordinary risk created by the placing of the live arms of the arrester within five feet nine inches of the ground and three and one-half feet of the wall of the substation building was a question for the jury. Even if he can be held to have known that the live arms of the lightning arrester were charged with electricity, then the next fact to be proven by the Plaintiff in Error, by a preponderance of the evidence, was that Sheaff comprehended and appreciated the danger of coming in close proximity to the lightning arrester.

As to whether he did so appreciate and comprehend the danger was a question for the jury, and having been decided adversely to the Plaintiff in Error by the general verdict, is conclusive upon the question of assumption of risk.

Labatt on Master and Servant, Sec. 1179 and cases cited under that section.



## IV.

## CONTRIBUTORY NEGLIGENCE

The real defense to this action, if the Plaintiff in Error had one, which we do not concede, was the defense of contributory negligence. That defense, like the affirmative defense of assumption of risk, must be pleaded and proved by a preponderance of the evidence.

See authorities cited under heading, "Does the complaint state a cause of action?"

In order to establish a defense of contributory negligence in this case, it was necessary for the Plaintiff in Error to establish by a fair preponderance of the evidence that Sheaff knew or ought to have known of the material conditions which rendered the act done by him in attempting to pass around the lightning arrester an imprudent act.

In discussing this proposition, Labatt in his work on Master and Servant at Sec. 1233, lays down this principle:

"It is manifest that a servant can not be deemed to have been in fault for the reason that he failed to take precautions which he did not know to be necessary for his safety. Hence his action will not be barred on the ground that he was guilty of contributory negligence in respect to the act which was the immediate cause of his injury, unless it is shown that he knew, or ought to have known, of the material conditions which rendered the act, so done, an imprudent one \* \* \* Obviously, if his excusable ignorance of those conditions is a proper inference from the facts in evidence, he cannot be declared, as a matter of law, to have been guilty of

contributory negligence. Under these circumstances it is unnecessary for a Court to pursue the inquiry into the second stage, by considering whether he comprehended the danger to which the conditions exposed him." Citing authorities.

At Sec. 1234, the same author announces the rule as follows:

"In cases where the servant's knowledge of the condition is not disputed, or is so apparent that a jury cannot be permitted to declare that he did not know of them, the essential question is whether he also comprehended the danger to which these conditions would subject him, if he pursued a certain course of conduct. Whenever the evidence is not such as to justify a Court in saying that only an affirmative answer can be rendered to this question, it is for the jury to determine the quality of his act."

As applicable to this phase of the question and also upon the question of sufficiency of the complaint, we call the Court's attention to the case of *Devore vs. St. Louis and S. F. R. Co.*, 86 Mo. App. 429.

Mr. Labatt lays down the further principle under Sec. 1244 of his work at page 3400:

"Contributory negligence being, as we have seen, predicable only where the servant understood the conditions and the resulting dangers, the case is always for the jury if it is not a necessary deduction from the evidence that he did understand those conditions and those dangers."



Counsel for Plaintiff in Error urges with great insistence that because Sheaff took a way which turned out to be dangerous, and which we admit was actually dangerous, where there was another way presumably safe, he is responsible for his own injury and cannot recover in this action. As we have heretofore pointed out the way from the last hole dug by Sheaff, which Counsel insists was a perfectly safe way, was steep, over uneven ground and ground that was covered with loose earth, rock and other obstructions, a difficult way to travel over. The way Sheaf took when going to get one of the cement blocks to put in the hole, was over ground level and smooth for almost the entire distance he would have to go. This matter is entirely a phase of contributory negligence, and comes directly under the principles announced by Mr. Labatt in the three or four sections last quoted. Where there are two ways, presumably safe, a servant cannot be charged with negligence in taking one of these ways which turns out to be dangerous, he being ignorant of the dangers. See

*Lauter vs. Duckworth*, 48 N. E. 864.

*McElligott vs. Randolph*, 61 Conn. 157, 29 Am. St. Rep. 181.

*Norfolk vs. W. R. Co. vs. Cheatwood*, 48 S. E. 489.

In order to charge Sheaff with contributory negligence he must have had knowledge of the danger. Contributory negligence cannot be laid at his door for the sole reason that it happened that he took the dangerous one.

*Payne vs. Oakland Traction Co.*, 15 Cal. App. 127.

In the case of *Ambry vs. Postal Telegraph Cable Co.*, 86

N. E. 871, the Court held that an instruction upon the fact of the servant's choice of a more dangerous of two ways of performing his work was erroneous because it omitted the element of the servant's knowledge of the greater danger of the way chosen, and Labatt in his work on Master and Servant, under Sec. 1249 at page 3436, states the rule of law as follows :

“It obviously results from the broad principle referred to in Sec. 1234 (ante) that the inability of a servant to recover on the ground that he adopted the less safe method of doing work, can be predicated only in cases where he not only had constructive knowledge, not merely of the material conditions with which he had to deal, but also comprehended the comparative safety of the various courses open to him.”

In the case of *Tennessee Coal, I. & R. Co. vs. Herndon*, 100 Ala. 451, 14 So. 287, the Court lays down the principle :

“The fact that an employee was injured because of the manner selected of doing his work, when if he had selected another way the injury would have been avoided, does not of itself fix upon him contributory negligence, since the result is not the true test ; but the test is whether he knew the way selected to be dangerous, or the danger was apparent or obvious.”

In discussing the question of assumption of risk and contributory negligence Counsel for Plaintiff in Error in speaking of the decision of the Court denying defendant's motion for an instructed verdict says, at page 82 of his Brief :

“The District Court held that from Sheaff's act in attaching a plum line to the dead arms, the jury may infer



inexperience or ignorance of danger. The Court's point was that if a surge had occurred even the dead arms would be dangerous. But the Court evidently did not have in mind the fact upon which all the experts agreed, that even under those circumstances there would be no danger from the dead arms. The current would pass to the ground through the ground wire—the line of least resistance. Even during a surge the dead arms could have been handled without injury. Of this Sheaff was probably aware."

There is nothing in the evidence, conceding that the statement of Counsel is correct, to indicate that Sheaff was probably aware of this, or had any knowledge whatever on the point, in fact it is apparent from Sheaff's testimony and conduct that he did not know the exact purpose of the arrester or the principal upon which it worked. All that the testimony shows is his statement that he understood that it was to protect the line from lightning and that it was not expected to work except when there was lightning on the line. However, Counsel's statement that all the experts agreed that even in case there was a surge on the line there would be no danger from the dead arm is not correct, for Professor Scrugham testified that if the dead ends of the lightning arrester were connected, as shown upon this construction, and the ground wire passed along a trench of the building, and passed out over a ground wire, and into a shaft, if a person came in contact with the dead arm of that arrester, or in contact with the ground wire, and a surge occurred upon the line sufficient to form an arc between the live and dead sides of the lightning arrester, the result would be that a person would probably be severely injured, but it would de-

pend upon the efficiency of the ground. That it is very difficult to obtain a thorough ground in this location. In explanation of that testimony he said:

“We have two paths for the current to go to the ground; one is through the ground wire, one is through the man’s body. If there is any obstruction or impedence to the passage of the current to the ground wire; that is, any appreciable obstruction, it would depend on the efficiency of the ground; a portion of that will take the path through the man’s body, probably injuring him severely, even killing him.” (Pages 297 and 298, fol. 87 and 88.)

So it appears that Counsel was entirely mistaken as to the fact that all of the experts agreed that there would be no danger from the dead arms in case of a surge on the line sufficient to cause the electricity to arc from the live to the dead side of the lightning arrester. So the observation of the Court that inferences of Sheaff’s inexperience and ignorance can be drawn from the act of attaching a plumb line to the dead arm of the lightning arrester is correct and well warranted, for no person other than one ignorant of the dangers would take chances of that kind with a current of 55,000 volts.

Much stress is laid by Counsel in his Brief upon the fact that this lightning arrester was enclosed and that there were danger signs on the door of the sub-station and the posts of the switch. From this fact he draws the conclusion that Sheaff was charged with knowledge that the lightning arrester was dangerous and that in passing by the live arm of the lightning arrester Sheaff did not use any care at all,



and that it is apparent from this that he must have wandered, without thinking, to a point within an inch and three-quarters of the north arm of the lightning arrester.

Let us consider for a moment the character of the enclosure. It was a wire fence, built of three or four strands of wire. The wire was either barbed wire or telephone wire. See transcript, pages 326 and 395, fols. 158 and 338.

What was there about the character of this fence to indicate to any one that the lightning arrester was a dangerous appliance and that there was any danger in coming in contact with it? All that could be inferred from this fence by the most careful man was that it was an enclosure put up for the purpose of keeping domestic animals away from appliance, for the purpose of protecting the appliance from the animals, not for the purpose of protecting the animals from the appliance. The fence was no obstruction to a man or child. It would make it but slightly more difficult for a man or child to pass through than if there was no fence there at all. The character was not such as to prevent men or children from going inside that inclosure and the fence as constructed could not be considered as any obstruction whatever to men or children. Had the fence been a high, tight board fence, then the inference Counsel seeks to draw, namely, that a person was charged with notice that the apparatus was dangerous, might be reasonably drawn. But the character of the fence, such as it was, could not be construed as giving notice to anyone that the structure was dangerous, or that it was built to protect anyone from the apparatus therein, but the notice given would be that the

fence was constructed to protect the apparatus from domestic animals. It was the kind of a fence used in that part of the country for the purpose of fencing against domestic animals and for no other purpose whatever.

Now, let us consider the danger signs. Sheaff's testimony upon that count is as follows :

"I don't remember whether there were any danger signs anywhere in connection with the Wonder sub-station, or not. It seems to me I have some kind of recollection of painting a danger sign myself. I did not under Mr. Halpenny's direction or at his request paint a danger sign at the Fairview sub-station. I think I did at the Wonder sub-station. I can't describe that danger sign ; I forget about it, what was on it. I believe I painted it with black paint on a piece of board. I can't say for sure whether I wrote the word 'Danger' on it. I do know this much, however, that I did paint a danger sign and my recollection is that it was at Wonder. I think I nailed it on the switch post at Wonder. I think I nailed that danger sign when I painted it, on the switch post at the Wonder Station. Using this merely for the purpose of illustration now, that would be posted in the neighborhood of these two poles on this outside structure. I posted it there because Mr. Halpenny told me to. That was the only reason that I posted it there, certainly. I thought it was to keep people away from the switch. I thought it was to keep them from monkeying with that switch. I thought it was just to keep them away from the switch so they would not bother it. At any rate, to the best of my recollection I knew the danger sign was up and I made it and put it up myself. I did not see any danger sign on the door of the Wonder



sub-station—I can't remember seeing any. I didn't see any danger sign on the door of the Fairview sub-station. I don't remember seeing any. I won't swear there was not a danger sign on the door of the Fairview sub-station; there may have been, if there was I did not notice it. On the day of my accident I did not see any danger sign in the neighborhood of the switch at the Fairview sub-station. On the morning of my accident, I don't remember seeing a large board in the neighborhood of the switch-board reading something like this, with large letters: 'Danger, high voltage, Keep out.' I don't remember seeing it. I didn't go anywhere near the switch-board. On these tallest upright posts on the structure, farthest away from the sub-station, I did not see a large danger sign there, 'Danger, high voltage, Keep out,' or something of that substance. I didn't look for any around there." (Transcript, pages 186 and 187, fols. 230 to 234.)

Mr. Greenleaf, superintendent of construction of the Plaintiff in Error, testified as follows:

"That lightning arrester was finished before I left there, and the fence that was around it was put up before I left. The wiring, with the exception of the concrete, was complete before I left. This ground that appears on here now was in. I did not place these danger signs myself. Mr. Perrin placed a danger sign on one of the poles of the switch, and on the door of the sub-station. I don't remember exactly what the sign said, because I have put up a good many hundred signs since then, but I do know that the word 'Danger' was on it, and I think 'High Voltage.' \* \* \* I don't know if there was a sign put on the switch; I said I thought I put it on, but I was not sure but that they put

it on; but I am pretty positive that the sign was put on the switch, in fact, I know it. I am absolutely sure the sign was put on that switch and that I saw it there.” (See Transcript, page 413, 414 and 422, fols. 378, 379 and 403.)

Mr. Halpenny testified as follows:

“On the nineteenth there was a danger sign on the front door of the sub-station, and as I remember it, one on the switch, fastened to the post. My recollection is that these signs said, ‘Danger, high voltage, keep out,’ or ‘keep away;’ they had the initials of the Nevada Hills Mining Company. They were all made from the same tracing; they were blue-print signs, made in the draughting office. It was the ordinary blue-print with white letters. I would say those letters were very plain. I saw them plainly. I don’t remember whether the letters were of uniform size or not, but my recollection is that some of the words, either ‘Danger’ or ‘High Voltage’—I believe the word ‘Danger’ was larger than the rest; and as I remember it, the letters would be some two and a half inches high. To the best of my memory I would say that the size of the whole sign was twelve by fifteen inches. \* \* \* The next day after the accident there was a danger sign on the switch post at Fairview. I am not sure who put it there. It was a piece of blue-print paper about twelve by eighteen inches.” (Transcript, Pages 450, 451 and 481, fols. 478, 479, 558.)

Mr. Greenleaf’s testimony, then, was to the effect that that sign contained, as he remembers it, ‘Danger, High voltage,’ and on his direct evidence testified that Perrin placed the danger sign on one of the posts of the switch, but on



cross examination testified that he didn't know if there was a sign on the posts of the switch. Mr. Halpenny testified that on the day succeeding the accident, that is, on the nineteenth, there was a danger sign on the front door of the station, and, as he remembered it, one on the switch fastened to the post; as he remembers it, the sign contained the words, 'Danger, High voltage, Keep out,' or 'Keep away.' It will be observed that one of these danger signs was placed on the front door of the sub-station. That was on the opposite side of the building from which the lightning arrester stood. The other danger sign, if there was any other on the day of the accident, was on the switch, was on the switch fastened to the post. The switch was eighteen or twenty feet from the dangerous part of the lightning arrester. From the language of the sign one would conclude that the switch was dangerous, that there was high voltage there, and the admonition was to keep away. Anyone looking at that sign would construe it to refer to the switch, and it is a fact that about the most dangerous thing about a powerplant is, ordinarily, the switch in the high tension lines, which connects or disconnects the electricity passing from these lines to the sub-station. And can it be said as a matter of law that a man of Sheaff's experience seeing a danger sign upon the post or upon the front door of the sub-station building, would be charged with notice that an apparatus on the opposite side from the door of the sub-station and twenty or thirty feet from the switch, which had been marked dangerous, would be charged with notice that the apparatus inside such an enclosure was dangerous. We insist that is not the law. So whether he would be so charged or not is a

matter for the jury to determine from all of the facts and circumstances of the case, and we insist that the existence of the danger signs, if any, at the points to which witnesses have testified, and the character of the enclosure, were not sufficient to appraise Sheaff, or any other person, that the lightning arrester was a dangerous appliance. We insist that these signs did not add anything to the testimony in the case, that they are entirely a negligible quantity

There was nothing in the testimony of this case, which destroyed in the least the effect of Sheaff's testimony that he did not know that the lightning arrester was dangerous, but there is much in the case to support his testimony upon that point. Some of the things that support his testimony are, first, the act of Sheaff in wrapping the twine about the dead arms of the lightning arrester, the very act of Sheaff going in close proximity to the live arms of the lightning arrester. The testimony of Mr. Halpenny that when Sheaff was working in the sub-station at Fairview and Wonder he had to repeatedly inform Sheaff that wires were hot or alive, and the fact that a man who had worked for some time with Sheaff, a thoroughly educated electrician, expressed himself on the morning of Sheaff's accident, and prior thereto, that he ought not to have sent Sheaff to Fairview, but should have gone there himself, and expressed himself after having received knowledge of Sheaff's injury that he felt that morning he should not have sent him over there. (See fols. 720, 721, 722, 724, 725, and 727.)

It is urged by Counsel for Plaintiff in Error that because this last testimony was offered in the form of impeaching



evidence, it cannot be received as substantive proof. We admit that that is the general principle of law but that principle is not applicable here. That testimony is entitled to be considered as proof of Sheaff's ignorance, and as an admission of the Plaintiff in Error's knowledge of his ignorance. The mere form of the question or that it is an effort to impeach a witness, does not destroy its probative force. (Jones on Evidence, Sec. 854.)

And the jury upon such evidence, having held that Sheaff was ignorant of the dangers and dangerous condition created by the construction of the lightning arrester, the verdict based thereon is an end of this question.

## V.

### DID THE COURT ERR IN REFUSING TO GIVE CERTAIN INSTRUCTIONS REQUESTED ON THE PART OF THE PLAINTIFF IN ERROR?

The Court modified instruction Number 3, by adding thereto this statement:

"This instruction must be understood with this addition: In determining whether there was negligence in sending Sheaff to work about the arrester, you should consider the situation and conditions, and what the Power Company knew of his experience and familiarity with electricity and electrical arms and appliances, and the dangers thereof."

This was a proper modification of that instruction. The evidence of Sheaff's knowledge and experience was offered by the Plaintiff in Error. They had sought to show by the testimony of Halpenny that he was a thoroughly competent

man; that he was familiar with the dangers incident to the work around a place of this kind. They insisted strenuously in the Court below that he was not ignorant of the dangers, and that by reason of his competency and knowledge, he assumed the extraordinary risks of working around this lightning arrester; that by reason of his knowledge and experience and the warning given him by Halpenny, he was guilty of contributory negligence.

The instruction as offered sought to limit the jury's consideration to one single circumstance in exclusion of all others, as being the infallible evidence of a complex fact dependent upon a number of circumstances and was properly modified.

*Reynolds vs. McArthur*, 2 Pet. U. S. 417, 7 Law Ed. 470.

All the surrounding or attendant circumstances must be taken into account when the question involved is one of negligence.

*Diamond State Iron Co vs. Giles*, 11 Atl. 189.

It is negligence to subject a servant to a risk not ordinarily incident to his employment unless obvious to him, or he be appraised of it in some manner.

*Bonnet vs. Galveston H. & S. A. Ry. Co.*, 33 S. W. 334.

Negligence has always relation to the circumstances in which one is placed and what an ordinary prudent man would do or omit to do in such circumstances.



*Charnock vs. Tex. R. R. Co.*, 194 U. S. 432.

---

The fourth assignment of error is that the District Court erred in refusing to instruct the jury as requested by Plaintiff in Error in its certain requested instruction No. 4 A.

This instruction was given in the exact language of the requested instruction and the substance was given in another part of the Court's charge. (See Transcript, fols. 774 and 792.

The effect was modified by the addition of the following words:

“Save as this admission is modified and limited by the allegation that he was unfamiliar with the work of a journeyman lineman and electrician, on or near wires or apparatus carrying electrical current of high voltage, and that said place was a dangerous place in which to work by reason of the fact that the live arms of said lightning arrester were so near the ground and in such close proximity to said sub-station, and that said dangerous conditions were wholly unknown to Plaintiff herein, and Plaintiff was ignorant of the same.” And was further explained by a part of the charge found at folio 794.

This was a proper modification and explanation of that instruction. The instruction taken as it was presented, would have limited the jury to the sole consideration of the duties of an electrician's helper and would have eliminated

from their consideration the main question in the case, namely, was the master negligent in the construction of the lightning arrester, and did that construction create an unsafe place in the law; and would have also excluded the question as to whether the dangerous conditions were wholly unknown to the Plaintiff and as to whether he was ignorant of the same. Like the other instruction it sought to limit the jury to one single circumstance in exclusion of all others, and was properly modified by the Court so as to make it applicable to the whole case. (See authorities cited under preceding section, and also see *Virginia Portland Cement Co. vs. Lutt*, 49 S. E. 577.)

---

Did the Court err in refusing to give instruction set forth under Paragraph V of the Brief for Plaintiff in Error?

It was inapplicable to the case at bar. The injury Defendant in Error received was in working around an apparatus carrying electrical current of high voltage and potential energy. As to whether he was ignorant of the dangers of a journeyman lineman or electrician in climbing poles and tying wires on lines carrying no electricity, was immaterial in the case, and besides the complaint not having alleged that Sheaff was employed or working as a journeyman lineman or electrician, an allegation that he was unfamiliar with the duties of a journeyman lineman or electrician upon or near wires or apparatus carrying electrical current of high voltage and potential energy, cannot be considered as an admission that he knew and was acquainted with all of the other



dangers of a journeyman lineman and electrician. But even if the complaint could be construed as an admission that Sheaff was familiar with all of the dangers of a journeyman lineman or electrician except the one from which he received the injury, an injury occurring by reason of the negligence of his employer, that fact would not be material in the case. The instruction could not serve to enlighten the jury or assist them in a proper determination of the case. It could only have the effect of clouding the issue. "A consumation on the part of the Plaintiff in Error devoutly to be wished."

It was certainly not an error on the part of the Court to refuse to give an instruction on a matter that was not in issue and upon which there was no evidence given.

*N. Y. & Colo. Mining Syndicate & Co. vs. Fraser*, 132  
U. S. 611.

---

Did the Court err in refusing instruction set forth under Paragraph VI of the Brief of Plaintiff in Error?

It is true that no expert testified that the placing of the live arms of the lightning arrester three and one-half feet from the substation building was a negligent construction, but it was a physical fact which the jury would be entitled to take into consideration and that the placing of the live arms so close to the sub-station would have the tendency to cause a person attempting to pass around the lightning arrester on that side to come closer to the end of the north horn of the lightning arrester in making the turn, than he would

naturally do if the horns had been placed a greater distance from the building. It was not a correct statement to say that there was no evidence to sustain this charge, because there was the evidence of a condition and the influence of that condition upon an ordinary man, ignorant of the dangers, was a matter which the jury was entitled to consider. It would have been error for the Court to have given that instruction.

It is error to instruct the jury entirely to disregard evidence as to certain defects, although the evidence did not show that the defects contributed to the injuries, the jury being entitled to consider all of the evidence in determining how the accident occurred.

*Mitchell vs. B. & Con. Cop. & S. Min. Co.*, 97 Pac. 1033.

An instruction that would exclude from the jury the consideration of any fact in evidence is erroneous.

*Adams & Harding vs. Roberts*, 2 Howard 486, 11 Law. Ed. 349.

We insist that the jury was entitled to consider the physical conditions which influenced Sheaff in coming in close proximity to the horn of the lightning arrester from which he received the discharge of electricity.

Did the Court err in refusing to give instruction set forth under Paragraph VII of the Brief of Counsel for Plaintiff in Error?



The reason assigned by Counsel why this instruction should have been given was that it clearly states the law and confines the jury to the precise issue made by the pleadings. The Court refused to give this instruction because there was no issue upon this question. In taking his exceptions, the substance of that instruction was stated by Counsel in the presence of the jury. The Court in its general charge had definitely limited the questions to be determined by the jury and in refusing that instruction stated in substance that there was no issue for the jury to consider because it was based upon the amendment which Plaintiff has withdrawn and stated in the presence of the jury that it was entirely out of the case.

The Court cannot be required to instruct the jury upon matters not in issue, neither is it necessary for the Court to tell the jury that certain things are out of the case. It is his province to tell the jury what is in the case and to limit them to the consideration of those matters. That he did, and having done that, the jury were instructed as to the law of the case. It would have been error to submit to the jury an issue which is not warranted by the pleadings and evidence.

*Throwegan vs. King*, 111 U. S. 549.

In the trial of an action for negligence resulting in an injury, the Defendant asked an instruction that the omission of certain acts or duties did not constitute such misconduct as the law would recognize as wanton and willful; such negligence was not alleged in the pleadings or claimed on the trial, and it was held that the refusal of such instructions was proper, there being no such issue in the case.

*Louisville Ry. vs. Shire*, 108 Ill. 142.

An instruction should not divert the attention of the jury to issues not presented thereby and it is proper to refuse such instructions.

Enc. Pl. & Pr. Vol. 11, page 160 and cases cited, including *Atlas Nat. Bank vs. Holm*, 34 U. S. App. 472 (Digest.)

---

Did the Court err in refusing to give the part of the instructions refused under Paragraph VIII of the Brief of Counsel for Plaintiff in Error?

The part refused is:

“If an employee is sent to work in a dangerous place, but the dangers, even though great, are open, plain and obvious and such as are or should be known to an adult person of ordinary intelligence and capacity, such place is under the law a reasonably safe place to work.”

This part of the instruction was properly refused, because it was inapplicable to this case at bar. And as an attempted to be applied to this case was an incorrect statement of the law. We admit that the word “safe” as applied to a case of this kind does not mean a place so made and guarded as to exclude all possibility of danger. No man of care, prudence and foresight can produce or insure such a condition, but a place which is dangerous can only be safe in the law when all safeguards and precautions which ordi-



nary experience, prudence and foresight would suggest have been taken to prevent injury to an employee while he is performing the work. The error in the part of the instruction refused by the Court eliminated entirely the question as to whether the master used ordinary care, prudence and foresight in constructing the appliance. If he took such precautions as ordinary experience, prudence and foresight would suggest to prevent injury, then the place was a safe place in the law. Counsel confuses the doctrine of "safe place" with the doctrine of contributory negligence. If the master has been negligent in performing his duty to create a reasonably safe place to work, nevertheless, the servant cannot recover if the dangers even though great, were open, plain and obvious and such as would or should be known to a person of ordinary intelligence and capacity, but the reason that he cannot recover is not that the place was a safe place to work but because either he assumed the risk or was guilty of contributory negligence in attempting to work at that place. The observation of the Court was made in response to the exception of Counsel, and was a true proposition in the law. It would have been error for the Court to have instructed the jury as a matter of law that a dangerous place, no matter how unnecessarily dangerous, is a safe place to work if the servant knows and appreciates the dangers. See

*Martin vs. Des Moines Edison Light Company*, 106  
N. W. at bottom of page 361 and top of page 362.

The case of *Dunbar vs. Hollingsworth, etc. Co.* is inapplicable to this discussion and besides the reasoning in that

case is not philosophical, or supported by the weight of authority.

---

Did the Court err in refusing to give the instruction set forth in Paragraph IX of the Brief of Plaintiff in Error?

This instruction is in substance the part of the instruction refused by the Court in the instruction last discussed, and it was no error to refuse the same. See

*McGovern vs. C. & R. Co.* 123 N. Y. 280.

*George vs. Clark*, 85 Fed. 608.

*B. & O. & C. R. R. Co. vs. Rowan*, 3 N. E. 627.

---

Did the Court err in refusing to give the instruction set forth in Paragraph X of Brief of Plaintiff in Error.

This is an instruction upon the facts and was only another way of asking for an instructed verdict. It involved the whole case and if the view taken by the lower Court and contended for in this Brief was correct, the instruction was properly refused. To argue this instruction would be to argue the entire case over again.



## COUNSEL'S CONCLUSION

It seems to us that we have seen this illustration before. Oh, yes, as we refresh our memory we find it was contained in Counsel's Brief on motion of a New Trial in this case.

Then, as now, it was the testimony of Lee Campbell that suggested the illustration. Yes, and then as now, it was his expression, "You bet I have heard that purring sound on the transformers frequently. It is a peculiar sound—just like a rattlesnake."

That sound suggested to Lee Campbell a rattlesnake; but who was Lee Campbell? He was a journeyman lineman and electrical worker of over thirty-seven years experience on all kinds of line construction and everything included around electrical appliances. He was the man, who, according to the testimony, said to Greenleaf, the superintendent of construction, and to Halpenny, the electrician in charge of construction at the time the lightning arrester was constructed that it was criminal negligence to leave that arrester with the live ends of the arrester so close to the ground.

Out of the abundance of his experience and knowledge, the sound made by the transformers suggested to him something as deadly as a rattlesnake.

But how about Sheaff? He said the transformers made a humming sound or a kind of a purr. There is nothing in the evidence to indicate that the sound suggested to him other than the hum of a telephone wire caused by the wind; or the innocent purr of a happy and contented kitten. This

illustrates the difference between the knowledge of Campbell and the knowledge of Defendant in Error and is significant upon the question of Sheaff's ignorance.

How about the illustration? Was Sheaff sent to dig holes in a place enclosed by a substantial fence, a fence that would fence out or fence in a nest of rattlesnakes? Was the danger sign which *possibly was upon the pole of the switch*, a sign apprising Sheaff or any other man, that the enclosure he entered was an enclosure filled with something as deadly as rattlesnakes? If the sign was such a one as Counsel would have us believe, did it say "Rattlesnakes within this enclosure" or did it say "Rattlesnakes on this switch?"

Did Sheaff, after digging the holes wander unthinkingly into the thicket, or was he then engaged in the work that he was sent to do, a part of which was to go and get the cement blocks from the side of the building and place them in the holes that he had dug? When he received the discharge of electricity, which made one of the most splendid physical beings Counsel ever saw, a cripple, who is to suffer for the balance of his natural life, did he hear the rattling of the rattlesnakes, or was the apparatus which dealt him the deadly charge as silent as the tomb?

If this illustration of Counsel is to be considered an illustration applicable to the situation, conditions and circumstances as shown by the evidence in this case, all that we can say is "God save the mark!"

We insist that this case shows negligence on the part of the master amounting to criminal negligence.



We insist that the instructions given by the Court were as favorable to Plaintiff in Error as it was entitled to. Nay, more, for if there is any criticism to be made on these instructions it is that they were more favorable to the Plaintiff in Error than it was entitled. That being the situation, then this case ought not to be reversed.

Dated, Elko, Nevada, October 1, 1915,

Respectfully submitted,

B. F. CURLER,

Attorney for Defendant in Error.

No. 2603

IN THE

# United States Circuit Court of Appeals

For the Ninth Circuit

---

PACIFIC POWER COMPANY

(a corporation),

*Plaintiff in Error,*

VS.

P. R. SHEAFF,

*Defendant in Error.*

---

UPON WRIT OF ERROR TO THE UNITED STATES DISTRICT  
COURT OF THE STATE OF NEVADA.

---

## REPLY BRIEF FOR PLAINTIFF IN ERROR.

---

METSON, DREW & MCKENZIE,  
WM. M. ABBOTT,  
WM. M. CANNON,  
GEO. A. BARTLETT,  
*Attorneys for Plaintiff in Error.*

---

*Filed this*.....*day of October, 1915.*

*FRANK D. MONCKTON, Clerk.*

*By*.....*Deputy Clerk.*





No. 2603

IN THE

# United States Circuit Court of Appeals

For the Ninth Circuit

---

PACIFIC POWER COMPANY

(a corporation),

*Plaintiff in Error,*

vs.

P. R. SHEAFF,

*Defendant in Error.*

---

UPON WRIT OF ERROR TO THE UNITED STATES DISTRICT  
COURT OF THE STATE OF NEVADA.

---

## REPLY BRIEF FOR PLAINTIFF IN ERROR.

---

The defendant in error, both in his brief and on oral argument, persistently charges the plaintiff in error with "criminal negligence" in building its lightning arrester too close to the ground and too near the substation building. No evidence was offered to show that the lightning arrester was built too near the substation. Consequently the so-called "criminal negligence" of plaintiff in error must have consisted in building its lightning arrester too close to the ground.

The only evidence introduced to show that the lightning arrester was built too close to the ground



consisted of the *opinions* of certain persons to that effect. Opposed to these opinions were others, given by *practical men*, to the effect that the lightning arrester was properly constructed and placed.

The undisputed *facts* demonstrate that there was no impropriety in the construction or placing of the lightning arrester.

The reason given for the conclusion that the lightning arrester was built too close to the ground was that in that position its dangerous character was increased. In other words, it is claimed that if the lightning arrester had been built at a greater distance from the ground it would be less likely to do injury.

In making this contention defendant in error fails to distinguish between danger to the *public* and danger to *employees*. It may be quite true that such a contrivance, if sufficiently elevated, would be less likely to injure persons or animals happening to be in its immediate vicinity than if placed near the ground. But no such question is involved in this case. The rule is well settled that even if a defendant owes a duty to some one else, but does not owe it to the person injured, no action will lie. The duty must be owed to the person injured.

*Tennessee etc. Co. v. Smith*, 55 So. 170;  
*Buckley v. Gray*, 110 Cal. 359 (and cases  
 cited).

Here the situation presented is danger to an employee, whose duty it was to work “near and around” dangerous contrivances and who, as an electrician’s helper, is admitted by the pleadings to have had all the knowledge, experience and caution necessary to the proper performance of the duties of that occupation. We say this is admitted because the complaint sets forth that he was employed as an electrician’s helper and there is no allegation of ignorance of his duties or want of knowledge of its dangers.

Professor Scrugham, the expert witness of defendant in error, testified, in substance, that it would be more dangerous for an employee to work around an elevated dangerous contrivance than one near the ground, because an employee can handle himself better on the ground than when suspended above it (Rec. p. 314, fol. 126). This testimony was not disputed by any other witness for defendant in error but, on the contrary, was supported by witnesses for plaintiff in error.

It clearly appeared that it was the duty of electricians and their helpers to work with and about live electric wires, and that it was frequently necessary to climb poles for that purpose and to handle “hot” wires while so suspended (Rec. p. 430, fols. 425-426). It is plain common sense that in doing such work an employee can avoid dangers much better while standing on the ground than when in an elevated position.



This is particularly true in working around high tension wires. In handling low voltage wires a pole is ordinarily sufficient insulation for an employee. If completely insulated he can handle such wires in safety. But with high tension wires there is great difficulty in insulation, because a pole may be damp or contain salt and thus become a sufficiently good conductor to render the position of an employee working thereon exceedingly hazardous.

Therefore, the opinions of experts to the effect that the lightning arrester was built too close to the ground must be held to apply only to the safety of the general public, because the undisputed testimony shows that so far as employees are concerned it is safer when constructed near the ground.

It is well settled that employers have the undisputed right to construct buildings, machinery and other contrivances used in carrying on their own business, in their own way, provided such construction is "safe" within the requirements of the master and servant rule (see *Reed v. Stockmeyer*, 74 Fed. 186-190). He may conduct his business in the way that seems to him best, although other ways may be less hazardous. In such case, if the servant knows the danger attendant upon such manner of prosecuting the work, and the hazard is not latent, he assumes the risk of the more hazardous method.

*Tuttle v. Railway Co.*, 122 U. S. 189; 7 Sup. Ct. 1166;

*Southern Pac. Co. v. Seley*, 152 U. S. 145; 14 Sup. Ct. 530;

- Naylor v. Railway Co.*, 53 Wis. 661; 11 N. W. 24;  
*Stephenson v. Duncan*, 73 Wis. 404; 41 N. W. 337;  
*Sweet v. Coal Co.*, 78 Wis. 127; 47 N. W. 182;  
*Casey v. Railway Co.*, 90 Wis. 113; 62 N. W. 624;  
*Sullivan v. Manufacturing Co.*, 113 Mass. 396;  
*Gilbert v. Guild*, 144 Mass. 601; 12 N. E. 368;  
*Crowley v. Pacific Mills*, 148 Mass. 228; 19 N. E. 344;  
*Coullard v. Tecumseh Mills*, 151 Mass. 85; 23 N. E. 731;  
*Railroad Co. v. Lyons*, 119 Pa. St. 324; 13 Atl. 205;  
*Anderson v. Lumber Co.*, 47 Minn. 128; 49 N. W. 664;  
*Michael v. Stanley*, 75 Md. 464; 23 Atl. 1094;  
*Rietman v. Stolte*, 120 Ind. 314; 22 N. E. 304.

The employer was not bound to consult with its employee as to whether its lightning arrester should be built close to the ground or not. It was *actually* built close to the ground. This the employee and all the world could see, and this the employee did see. So seeing he, an experienced employee, elected to work "near and around" it. That being so it is difficult to see how, so far as an employee is concerned, there was any negligence in the construction of the lightning arrester. It might be a different case if a third party, or an animal, were injured.



But, as shown in our opening brief, if there was any negligence in the construction of the lightning arrester, such negligence was completely “insulated” from the injury. It was only a remote cause or condition, and there was no proximate connection between such negligence and the injury. The essence of the cause of action of defendant in error, if any he has, consists in being sent to work in a dangerous place without warning or instruction. And, as shown in our opening brief, no warning or instruction was necessary because (1) the complaint fails to set forth absence of warning or instruction, and (2) an employer is not bound to warn or instruct an experienced employee.

So far as the lightning arrester itself is concerned it is of a recognized standard type. It is a German invention, and of late years has been much used in the western part of this country, particularly California and Nevada (Rec. p. 302, fol. 98; p. 311, fol. 121; p. 402, fols. 346-352; p. 494, fols. 593-598; p. 504, fols. 618-619; p. 511, fols. 638).

The above references to the record will demonstrate how extensively horn-gap lightning arresters have been in use in the United States, and particularly in California and Nevada. Of course the construction and position are varied to some extent, depending upon local conditions, but the principle of the “horn-gap” is preserved in all of them. Whether constructed near or above the ground the horns and the gap are always a necessary and essential part of the contrivance.

The pipe of which the horns were constructed was so small as to have the appearance of wire. In fact, they were referred to throughout the trial as "wires." Lee Campbell, a witness for defendant in error, testified that "they were gas-pipe—*quarter inch* gas-pipe" (Rec. p. 250, fol. 393). Even he referred to them as "wires," saying, "I helped tie these *wires* on a fixture there on the bottom and up also on top" (Rec. p. 251, fol. 394).

They could not have differed much in appearance from the overhead high tension wires because they were practically the same size. Sheaff testified that the high tension wires were "approximately between three-sixteenths and a quarter of an inch in diameter" (Rec. p. 103, fol. 13). On this subject Sheaff says:

"Those power wires were approximately between three-sixteenths and a quarter of an inch in diameter; the telephone wires were about one-eighth of an inch in size, possibly a little less. The electric wires, I think, were made of copper and the telephone wire was made of galvanized iron."

Therefore there was very little difference, if any, between the appearance of the high tension wires and the gas-pipe used for the horns of the lightning arrester. The pipes composing the live arms of the lightning arrester were attached to the high tension wires above and in plain view.

No point can be made upon the fact that the horns were made of pipe instead of wire. In fact, they had the appearance of wire, and as they were



capped at the ends they could not be distinguished from heavy wire. The opening in the center was the only thing which could distinguish them from heavy wire, and that opening was closed by the cap. Therefore any observer, unless he had actual knowledge to the contrary, must have regarded them as heavy wires attached to the heavy high tension wires above.

Whether pipe or wire was ordinarily used in lightning arresters of that type does not appear directly, but as the testimony is all to the effect that such lightning arresters, particularly as to the horns, were substantially alike, it is safe to conclude that such pipe was in common use. It does appear, however, that the same kind of pipe was used in the lightning arrester at Wonder and that Sheaff assisted in constructing that arrester and in placing the pipes on the insulators (Rec. p. 445, fol. 464).

On this subject Halpenny testified:

“Mr. Sheaff and I built that lightning arrester with the exception of some assistance at the time the pole was raised. Outside of that there was nobody else besides myself and Mr. Sheaff that I remember working on the Wonder lightning arrester. *We used the same size pipes at the Wonder lightning arrester for the horns. Mr. Sheaff and myself bent them and put them in and wired them up.* It took the two of us something more than a day to build that lightning arrester. With that lightning arrester for a ground we dug a hole in the ditch, carrying slimes from the mill, in wash ground, and placed a copper plate similar to the one used at the Fairview station, to which was soldered the

ground wire, which, in turn, ran from the plate to the arrester. Mr. Sheaff assisted me in laying that wire and placing that wire in the moist ground. We were alone at the work."

The lightning arrester at Wonder was built a week or ten days later than the lightning arrester at Fairview (Rec. p. 445, fol. 464).

Sheaff also assisted in laying the ground wire at the Fairview lightning arrester, this ground wire being carried from the dead arms of the lightning arrester to an abandoned shaft some distance away.

Of course electricity could only get to the ground through the ground wires which Sheaff assisted in laying by passing through the pipes forming the live ends of the lightning arrester. Sheaff, therefore, must be held to know that such pipes were to be used in carrying electricity from the high tension wires to the ground.

Under all the circumstances existing at the time, and keeping in mind the fact that the lightning arrester was built on the top of a hill in the Nevada desert, it is difficult to see how its construction constituted "criminal negligence", or negligence at all.

Although we consider that in the particulars mentioned in our opening brief the court erred in its instructions to the jury, we nevertheless feel that if the jury had followed the court's instructions, even as given, the verdict must have been for the plaintiff in error. As frequently happens in cases of serious injury (where the jury's sympathies are



always aroused), they returned their verdict in plain disregard of the law as given by the court.

From any point of view this case may be regarded the verdict was without support in law and should not be allowed to stand.

Dated, San Francisco,  
October 27, 1915.

Respectfully submitted,

METSON, DREW & McKENZIE,  
WM. M. ABBOTT,  
WM. M. CANNON,  
GEO. A. BARTLETT,  
*Attorneys for Plaintiff in Error.*

No. 2603

IN THE

# United States Circuit Court of Appeals

For the Ninth Circuit

PACIFIC POWER COMPANY (a corporation),  
*Plaintiff in Error,*

VS.

P. R. SHEAFF,

*Defendant in Error.*

UPON WRIT OF ERROR TO THE UNITED STATES DISTRICT  
COURT OF THE STATE OF NEVADA.

## PETITION FOR A REHEARING ON BEHALF OF PLAINTIFF IN ERROR.

WM. M. ABBOTT,

WM. M. CANNON,

Holbrook Building, San Francisco,

METSON, DREW & MCKENZIE,

Balboa Building, San Francisco,

GEO. A. BARTLETT,

Carson City, Nevada,

*Attorneys for Plaintiff in Error  
and Petitioner.*

Filed

Filed this.....day of September, 1916. SEP 13 1916

FRANK D. MONCKTON, Clerk.

T. D. Monckton

By.....Deputy Clerk.





No. 2603

IN THE

# United States Circuit Court of Appeals

For the Ninth Circuit

---

PACIFIC POWER COMPANY (a corporation),  
*Plaintiff in Error,*

VS.

P. R. SHEAFF,  
*Defendant in Error.*

---

## PETITION FOR A REHEARING ON BEHALF OF PLAINTIFF IN ERROR.

---

*To the Honorable William B. Gilbert, Presiding  
Judge, and the Associate Judges of the United  
States Circuit Court of Appeals for the Ninth  
Circuit:*

The plaintiff in error most respectfully petitions this court for an order vacating and setting aside the judgment rendered herein August 14, 1916, and granting a rehearing of this cause.

It appears to us from a most careful and painstaking examination of the opinion that the decisive fact in this case, in the mind of the court, is that electricity will *jump* from wires carrying a high



voltage. This fact is made so prominent in the opinion, and referred to so often, that we feel sure it is the only thing that saved the case from a reversal. The conclusion is inevitable, from the reasoning of the court, that, if the accident happened as a result of *actual contact* with a live wire, the judgment appealed from would have been reversed. This peculiar quality is made the answer to the contention that the complaint does not state facts sufficient to constitute a cause of action; it is made the answer to the contention that the jury should have been instructed to find for the plaintiff in error; it is made the answer to the contention that the defendant in error assumed the ordinary risks of his employment; and it is made the answer to the contention that the defendant in error was guilty of contributory negligence.

That this is true will appear from the following quotations from the opinion. With respect to the contention that the complaint did not state facts sufficient to constitute a cause of action the court says:

“To sustain the argument of the plaintiff in error against the sufficiency of the complaint would be in effect to hold that an electrician’s helper is bound to know, as a matter of law, that a high power current of electricity is *liable to jump* from its conductor and pass through one who approaches too close to the conductor. We think it very clear that the law imputes no such knowledge to the helper of an electrician.” (Italics ours.)

Thus it appears that the complaint is sustained because of the liability of electricity to jump. The inference from the foregoing quotation is irresistible that an electrician's helper is bound to know enough not to come into actual contact with live electric wires.

In dealing with the contention that the case should have been taken from the jury, the court says:

“From his own testimony there can be no doubt that he knew better than to knowingly come in *direct contact* with a live wire, or other conductor of electricity; but that fact by no means sustains the contention of the plaintiff in error that the court should have taken the case from the jury by directing a verdict in favor of the defendant. \* \* \* The testimony of the plaintiff tended to show, among other things, that he was ignorant of the dangers attending working around or in the vicinity of live wires, and did not know and was not told that there was any danger of an *electric current jumping* from the live arms of the arrester in question if approached too close, and in this respect his testimony finds some corroboration in the testimony of Mr. Halpenny, the company's electrician, who sent him there. \* \* \* There was evidence tending to show that he *did not actually touch* the live arm, but in the nature of things he must have passed sufficiently close to it to attract the current; and there was positive testimony that such a voltage would jump at least  $1\frac{3}{4}$  inches from its conveyor.” (Italics ours.)

The liability of electricity to jump, therefore, was a vital consideration in holding the evidence sufficient to go to the jury.



In dealing with the defense of assumption of risk the court said:

“The testimony of the plaintiff and of the defendant’s witness, Halpenny, is, we think, amply sufficient to sustain the conclusion of the jury that the plaintiff did not assume the risks to which he was subjected, for not only did the plaintiff testify that he did not know and never was told that a current of electricity *would jump* from its wire or other conductor to and pass through a man who approached it too closely, but the jury might well have concluded from Halpenny’s testimony above quoted that the plaintiff had no such knowledge and was by no means familiar with the dangers attending work around or about high tension wires or pipes, extending so near the ground as to admit the current of electricity *leaving them* and passing to and through a human being who should touch or *approach too close* to the conveyor \* \* \* nowhere in Halpenny’s testimony does it state that he ever told the plaintiff that it was dangerous to pass *close* to the live arms of the arrester even if he *did not touch* them.” (Italics ours.)

Therefore it appears that the liability of electricity to jump is made the deciding factor in the defense of assumption of risk. The inference is plain from the decision (and such an inference is supported by the overwhelming weight of authority) that an electrician’s helper, especially one who acknowledges “that he knew better than to knowingly come in direct contact with a live wire or other conductor of electricity,” assumes the risk of danger to himself from such contact. There can be no doubt, we think, that if the accident had

happened through actual contact with the live wire the defense of assumption of risk would have been held to be completely established.

Upon the defense of contributory negligence the same prominence is given to this peculiar quality of electricity. The court says:

“It is true that a danger sign was posted on the door of the transformer building, and it seems that a similar notice was posted on a post of the structure but it is not pretended that either sign contained any notice that there was any danger of the current of *electricity jumping* from the live arm to a person only passing it, even if very close. There is nothing in the evidence indicating that the plaintiff voluntarily or even carelessly came into *actual contact* with either of the live arms; on the contrary, the bubble shown by the evidence on the lower end of the arm from which the plaintiff received the shock, indicates that the *current leaped* to him, and as said by the trial court, the nature and location of the injuries on the plaintiff’s person, as shown by the evidence, tended to corroborate that theory.” (Italics ours.)

There can be no doubt, therefore, that if the defendant in error had actually come into contact with the live wire he would have been held guilty of contributory negligence as a matter of law.

Assuming that we are correct in our analysis of the opinion, we are confident that a grave error has been committed by the court. We feel sure that if the court will patiently review the record and the briefs it will conclude—



1. That the complaint does not state a cause of action *based upon the theory of the liability of electricity to jump*; and

2. That the evidence does not show, even prima facie, *that the electricity did jump*.

If it can be shown that the evidence is insufficient to prove that the electricity *did* jump, or if it was not proven that such jumping was the proximate cause of the injury it will necessarily follow—

1. That the defense of assumption of risk is completely established, and

2. That contributory negligence is shown as matter of law.

We propose, with the kind indulgence of the court, to discuss the foregoing propositions and, in view of the importance of this litigation to the plaintiff in error (for the evidence shows that it is but a small, struggling concern) strongly urge upon the court its full and patient reconsideration.

Before doing so, however, we wish to call particular attention to certain mistakes and inaccuracies in the court's statement of the allegations of the complaint and in its statement of the evidence. These mistakes are of such a character as to be of great materiality in view of the fact that the case is such a close one, depending, as it clearly appears, upon the single question as to whether the electricity did or did not jump; or depending, in other words, upon whether the defendant in error touched or did not touch the live wire in question.

Referring to the complaint the court says:

“The action is based upon the ground that the place where the plaintiff was put to work was not a safe place, for the alleged reason that the lightning arrester was defectively constructed and maintained by the defendant in the particulars set out in the complaint, and as constructed and maintained was dangerous, *of which dangers the plaintiff did not know and was not warned*, and that in the course of his employment in passing the live arms of the arrester an electric current therefrom of tremendous voltage inflicted upon him the injuries for which he sued.” (Italics ours.)

There is no allegation in the complaint that the plaintiff *was not warned* of the dangers of his employment. The complaint may be searched in vain for an allegation of that character (Record, Vol. I, pp. 1-8). Neither is there a *direct allegation* that the plaintiff did not know of the liability of electricity to jump. Nor is there any allegation that the electricity did in fact jump.

If the complaint had unequivocally alleged that plaintiff received his injuries by reason of the electricity jumping from the wire to his body the situation might have been different. But the complaint contains no such allegation. The equivocal allegation is made that plaintiff “came either in such *close proximity to or in contact with* one of the said arms of such lightning arrester whereupon” etc.

As all complaints are construed most strongly against the pleader this cannot be considered as an



allegation that the electricity *jumped* from the wire and injured the defendant in error.

When this court, therefore, said that

“To sustain the argument of the plaintiff in error against the sufficiency of the complaint would be in effect to hold that an electrician’s helper is bound to know as a matter of law that a high power current of electricity is liable to jump from its conductor and pass through one who approaches too close to the conductor,”

we feel (and we say it with due respect) that the allegations of the complaint were clearly misstated and misconstrued. The seriousness of this mistake will be shown hereafter.

In discussing the evidence the court says:

“At the time in question this lightning arrester had not been completed—the dead arms not being connected in any way with the ground. Nevertheless, connection with the high tension feed wires had been made, and in consequence the arrester, though incapable of performing its functions, was charged with the full voltage of electricity on the high tension wires amounting to about 55,000 volts. It was to prepare for connecting the dead arms on the opposite side of the transformer building with the ground that the plaintiff was sent by Halpenny to the Fairview substation to dig the holes under each of the dead arms, and into each of the dead holes he was to put a cement block that he took with him.”

This statement of the evidence is erroneous. *The dead arms were connected with the ground and the lightning arrester was capable of performing its*

*functions.* When it was first constructed the dead arms were connected directly with wires laid in a trench in the ground. These wires were carried to an abandoned shaft some distance away and connected with a copper plate which was lowered into the shaft, thus forming a ground. Being thus completed the current was turned into the substation and the lightning arrester was in shape to take care of any surge upon the line from lightning or any other cause. Mr. Halpenny was not satisfied with the ground wiring thus provided, and decided that a more satisfactory ground could be made by using the cement blocks. The idea was that the cement blocks would furnish more resistance, thus cutting off the current more quickly after the subsidence of a surge. Therefore when Sheaff went to do his work the lightning arrester was complete and in operation, which he well knew.

In considering the evidence the court evidently considered that the plaintiff in error was at fault in charging the live arms of the lightning arrester with the full voltage of electricity then on the high tension wires when—as the court thought—the contrivance was in an uncompleted state. The court might well have thought it improper for an employer to set an employee at work upon an uncompleted contrivance charged with electricity, while, on the other hand, it might have been entirely proper to set him at work upon a completed operating contrivance known to the employee to be oper-



ating and charged with electricity. We feel that this mistake is sufficiently important to be corrected.

The court further says in its opinion:

“There was positive testimony that such a voltage would jump *at least*  $1\frac{3}{4}$  inches from its conveyor.” (Italics ours.)

This is a mistake. The evidence is that the current would jump *at most*  $1\frac{3}{4}$  inches from its conveyor. All of the experts agree upon this. Tables were introduced in evidence showing the different distances to which electricity would jump at different voltages, and all the witnesses agreed that  $1\frac{3}{4}$  inches was the outside limit even under the most favorable conditions (Record, Vol. II, p. 308, fol. 113). A man's body is not a good conductor, and therefore it was not likely that electricity would jump  $1\frac{3}{4}$  inches to a man's body. It would only jump that distance to a good conductor such as a metal ball (Record, Vol. II, pp. 307-308, ff. 109-113).

The evidence showed that the live and dead arms of the lightning arrester were  $4\frac{1}{4}$  inches apart. It would require a heavy load of static electricity resulting from lightning to cause the current to jump that distance. That was the very principle upon which the lightning arrester worked. When the voltage became sufficiently high the electricity would jump from the live to the dead arms of the lightning arrester and find its way to the ground,

thus relieving the pressure upon the wires until normal conditions were resumed.

Therefore the evidence amounts to a demonstration that Sheaff was less than  $1\frac{3}{4}$  inches away from the live arm of the lightning arrester when he was injured. Even if this evidence were to be ignored he could not have been more than  $4\frac{1}{4}$  inches away because if there had been a surge at that moment the electricity would have jumped to the dead arm of the lightning arrester instead of to Sheaff's body. But no question of a surge can enter into this case because there was no lightning, the day being a clear and pleasant one. Furthermore, the records at the power house were introduced in evidence and showed that there had been no surge upon the wire from any cause whatever.

The court in deciding the case was evidently under the impression that electricity would jump for a considerable distance, the opinion stating that it would jump *at least*  $1\frac{3}{4}$  inches. The court does not state how far it would jump, and we are thus left in the dark as to the court's view upon that subject. If electricity would jump six or eight inches or a foot, Sheaff's conduct might be excusable, and his employers inexcusable in setting him to work without warning of such a danger. But as it would jump at most  $1\frac{3}{4}$  inches it would seem that Sheaff's conduct is inexcusable in going so very close to a wire carrying, to his knowledge, such a high voltage. If Sheaff, as the court admits, had sufficient knowledge to avoid actual contact



with a live wire he certainly should be required to exercise a sufficient degree of care *to remain far enough away from such a wire to avoid an ACCIDENTAL contact*. Negligence on his part would not consist only in actual voluntary contact with such a wire. It would be just as much negligence if he carelessly allowed himself to get so close to a live wire as to come into contact with it *accidentally*.

Therefore we say that this mistake on the part of the court as to the distance electricity would jump is of vital importance in this case.

The court further says:

“Besides it does not appear that the arrester at the Wonder Station was connected with the high tension wires at any time prior to the digging of the holes.”

By referring to page 154, folios 150-151, volume I, of the record, the court will see that this statement is a mistake and that the lightning arrester at the Wonder Station was connected and in operation and that Sheaff knew it.

We shall now proceed to discuss the propositions hereinabove mentioned.

---

## I.

### THE COMPLAINT DOES NOT STATE A CAUSE OF ACTION BASED UPON THE THEORY OF THE LIABILITY OF ELECTRICITY TO JUMP.

In cases of this character nothing is better settled than that there is no obligation resting upon

an employer to instruct or warn an *experienced* employee.

*Dunbar v. Hollingsworth*, 84 Atl. 992, 994;  
*O'Connor v. Atchison etc. Co.*, 137 Fed. 504,  
 505.

An employer is entitled to assume that such an employee needs no instruction or warning (*Dunbar v. Hollingsworth*, *supra*). He may also assume that such an employee appreciates the ordinary dangers of his employment (*Dunbar v. Hollingsworth*, *supra*). On the other hand, an inexperienced and ignorant employee is entitled to warning and instruction where the employer knows of such inexperience and ignorance.

*Dunbar v. Hollingsworth*, *supra*;  
*O'Connor v. Atchison T. & S. F. Ry. Co.*,  
 137 Fed. 504, 505;  
*Reed v. Stockmeyer*, 74 Fed. 186-190, and  
 cases cited.

In the present complaint, however, there is no allegation of *knowledge* on the part of the employer that his *experienced* employee did not know of the dangers of his employment.

Therefore it appears to us that the complaint is radically defective in the following particulars:

1. There is no allegation that the defendant in error was an *inexperienced* employee or was hired as such.



2. There is no allegation that the plaintiff in error *knew* of any want of experience of defendant in error, or of any lack of knowledge on his part of the dangers of his employment.

3. There is no allegation that the defendant in error *was not warned* of the dangers of his employment.

The court says:

“We also agree with the court below that ‘cases of this kind differ from those which have been cited where the danger was open and apparent to one in the exercise of his ordinary senses. A live wire or a live pipe, such as we have in this case, is not like an opening in the floor, or a rapidly revolving wheel, which people may see and avoid. A live wire is quite as innocent in appearance as a dead one; it gives no warning before it deals the fatal shock’.”

From this quotation it would seem that the court regarded the danger to which defendant in error was exposed as a *latent* or *concealed* one. The inference from the entire opinion is that an electrician’s helper is entitled to go as near as he pleases to a wire which he knows, or is in a position to know, is carrying an exceedingly high voltage of electricity. The idea seems to be that because such a wire is “innocent in appearance” an electrician’s helper may take any sort of chance he pleases in its immediate vicinity *so long as he does not touch it*.

We take direct issue with the court on this question, and rely upon the case of *Law v. Central Dist.*

*P. & T. Co.*, 140 Fed. 558, 564, 565, wherein it was decided that an employee is held to the same standard of care in handling a wire which he assumes to be "dead" as he is bound to exercise in handling one known to be "live". The authorities are legion to the effect that in this day and age everybody is presumed to know something of the dangers of electricity.

*Andrews v. Valley Ice Co.*, 167 Cal. 11, 20, 21;

*Dunbar v. Hollingsworth, etc. Co.*, 84 Atl. 992, and cases cited in briefs on file.

If so, certainly an electrician's helper should be charged with sufficient knowledge and discretion, as matter of law, to keep farther away from a live wire than one inch and three-quarters. Even a child who knows enough not to voluntarily *touch* an electric wire should be expected to keep far enough away to prevent an *accidental* touching.

We think that the last sentence quoted above should have read as follows: "A *dead* wire is quite as *dangerous in appearance* as a live one." In a country and in an age where live electric wires are on every hand, any wire strung upon poles, dead or alive, is in itself a danger signal (*Dunbar v. Hollingsworth*, *supra*).

To illustrate:

A man is skating on ice. It is thick in some places and thin in others. The thin places are just as innocent in appearance as the others. Is the



skater entitled to assume that all the ice is thick because it is "innocent in appearance"?

Another illustration:

A day or two ago a woman was wading in shallow water. There was a deep hole made by a dredger into which she stepped and was drowned. Near the hole was a sign marked "Danger". The deep water was just as "innocent in appearance" as the shallow. Was she justified in assuming that it was all shallow because of its innocent appearance?

The ordinary man or boy should not experiment with a wire to determine whether it is alive or dead. He should assume that it is alive and avoid contact with it. Neither should he assume that the ice is all thick nor the water all shallow.

The decisions of all the courts *require* any ordinary person to avoid contact with electric wires. Why, then, should an electrician's helper, who is supposed to know so much more about electricity than the ordinary man, be excused from taking the course which the law imposes upon an ordinarily constituted individual?

But even considering the propensity of electricity to jump from a wire carrying a high voltage as a concealed or latent danger, still the complaint does not state a cause of action, because it does not charge that the danger was latent or concealed, or that the employer, knowing of such latent and concealed danger, and knowing of plaintiff's igno-

rance thereof, nevertheless exposed him to it, or that if it did such neglect proximately caused injury.

See in this connection

*O'Connor v. Atchison T. & S. F. Ry. Co.*, 137 Fed. 504, 505.

In all the authorities we have examined, danger from live electric wires is considered as obvious and patent unless there are special circumstances showing concealment of the wires or defective insulation, or unless there were facts alleged and proved which excused ignorance of danger upon the part of the injured person.

*Law v. Central Dist. P. & T. Co.*, 140 Fed. 558.

But here the live wire was in plain view and there is no allegation in the complaint to the contrary. No allegation to the contrary could have been made with truth, because the connections between the live arms and the high tension wires above were in plain view. No allegation that the plaintiff did not know the wires were carrying electricity could have been made with truth, because he admits he heard the humming of the transformers and knew the current was passing through the wires to them.

The court does not seem to consider that an electrician's helper is charged with the same amount of knowledge of the dangers of electricity as a lineman. Conceding this it simply means that he



should have been warned by the employer. If so, the complaint should have set forth lack of warning. The court says the complaint contains such an allegation. We have shown that the complaint does not. An allegation of lack of warning, therefore, was vital to the cause of action. If so—and we cannot see how it can be otherwise—a rehearing is necessitated because the decision is based upon this misconception of the allegations of the complaint.

We have already adverted to the failure of the complaint to charge that the electricity jumped from the wire to plaintiff's body. In this connection it states that the plaintiff "came either in such close proximity to *or* in contact with one of said arms" etc. If the plaintiff came in "close proximity to" the wire and the current thereupon jumped (which is not alleged), it might reasonably be held that a duty to warn an ignorant employee of such propensity rested upon the employer. But even in such a case, an allegation of lack of warning would be necessary to state a cause of action. On the other hand, if the complaint means that plaintiff came "*in contact* with one of the arms of said lighting arrester" then there was no duty resting upon the employer to give him any warning whatever, and it makes no difference whether the complaint contains an allegation of warning or not.

Judging from the allegations of the complaint, how did the accident actually happen? What was the proximate cause of plaintiff's injury? Was it

the jumping of the electricity or was it the result of actual contact? The complaint does not answer these questions and therefore does not allege any proximate connection between the negligence charged and the injury.

Negligence in and of itself is innocuous. Where there is no causal connection shown between negligence and an injury, no cause of action is alleged. In pleading a cause of action for damages for negligence the necessity to set forth the facts showing a direct causal connection between the negligence alleged and the injury is really greater than the necessity of setting forth the facts showing negligence. This has been several times held in this state.

*Smith v. Buttner*, 90 Cal. 95, 99;

*Crabbe v. Mammoth C. G. Min. Co.*, 168 Cal. 500, 505;

*Merrill v. L. A. Gas & E. Co.*, 158 Cal. 499, 503, 504;

*McKune v. Santa Clara V. M. & L. Co.*, 110 Cal. 480, 486;

*Schwartz v. Cal. Gas & E. Co.*, 163 Cal. 398.

What was the causal connection between the negligence alleged and the injury? Was it the jumping of electricity or actual contact? If the former, one principle of law applies; if the latter, another.

As we understand the opinion, if the electricity jumped the judgment should be affirmed. If the injury occurred through actual contact it should be reversed. Is it not of the first importance, there-



fore, that the complaint should set forth a clear, specific and straightforward cause of action, as the line is so finely drawn between liability and non-liability? And is it not also of the first importance that a judgment should not be permitted to stand where the complaint does not in fact allege lack of warning—a *necessary* allegation?

For the purpose of demonstrating the propositions hereinbefore so positively asserted, we here recite some of the authorities cited in our briefs.

*Looney v. Metropolitan R. Co.*, 200 U. S. 480;  
*Andrews v. Valley Ice Co.*, 167 Cal. 11, 20, 21;  
*Felton v. Girardy*, 104 Fed. 127;  
*Kohn v. McNulta*, 147 U. S. 238;  
*Tuttle v. Detroit etc. Co.*, 122 U. S. 189;  
*Blick v. Olds Motor Works*, 141 N. W. 680;  
*Dunbar v. Hollingsworth etc. Co.*, 84 Atl. 992,  
 994.

From the foregoing it must be perfectly clear that an allegation as to warning or lack of warning is of vital importance in the statement of a cause of action. If so, the complaint in this case is fatally defective because it does not contain any such allegation.

---

## II

**THE EVIDENCE DOES NOT SHOW, EVEN PRIMA FACIE, THAT  
 THE ELECTRICITY DID JUMP.**

As already shown the complaint does not specifically charge that the current jumped from the wire

to the body of defendant in error. The allegation is in the disjunctive, the complaint stating that the plaintiff came either in close proximity to *or* in contact with the wire, thus receiving the current. But whether he received it from actual contact or through the jumping of the current is not alleged.

The court, however, in considering the case, has evidently adopted the theory that the complaint sufficiently alleges that it jumped, and, as shown by the above quotations from the opinion, has affirmed the judgment on that theory. Certain it is that the court did not affirm the judgment on the assumption that Sheaff came into actual contact with the wire.

In considering the evidence, therefore, we must do so *on the assumption that there is a sufficient complaint charging that the electricity jumped to the body of the defendant in error*. From our point of view this is a violent assumption but it must be indulged in view of the court's ruling that the complaint states a cause of action.

If, therefore, we assume that the complaint states such a cause of action it follows that the evidence must be sufficient to sustain that cause of action. In other words, the evidence must be sufficient to show that the electricity jumped, otherwise the material allegations of the complaint are not proved.

In its opinion the court says:

“There was evidence tending to show that he did not actually touch the live arm, but in



the nature of things he must have passed sufficiently close to it to attract the current."

Again:

"There is nothing in the evidence indicating that the plaintiff voluntarily, or even carelessly, came into actual contact with either of the live arms; on the contrary, the bubble shown by the evidence on the lower end of the arm from which the plaintiff received the shock indicates that the current leaped to him, and as said by the trial court, the nature and location of the injuries on the plaintiff's person, as shown by the evidence tended to corroborate that theory."

With all due respect we urge that the court has drawn erroneous conclusions from the uncontradicted evidence.

We assert that there was no evidence tending to show that he did not actually touch the live arm; or that the presence of the bubble indicated that the current leaped to him; or that the nature and location of the injuries corroborated that theory. The only evidence referred to by the court which tended in the remotest degree to show that the current leaped to the plaintiff's body is the bubble appearing on the end of the arm nearest plaintiff, and the nature and location of the injuries on plaintiff's person. No other evidence could have been referred to because there is none in the record. The facts as shown by the uncontradicted evidence are as follows:

Witness Schrughum testified that the bubble indicated that the current had left the wire at that

point; that it could have jumped from the wire at that point or that the same bubble would be shown if there had been actual contact at that point.

At Volume II of the record, page 306, folios 105 to 108, inclusive, the witness Scrugham, an electrical expert produced by the plaintiff, testified as follows:

“Applying that principle to the case in hand, and assuming that a person came in contact with the point of the wire or pipe in question, and then either fell away or drew away, that arc would be formed on the same principle as the make and break spark. After the voltage reaches a certain amount, a distance of a fraction of an inch makes very little difference. In either case there would be the arc, fire and burning resulting. *That might have the effect of leaving its mark on the wire in either instance. In the case of either the jump or actual contact and drawing away that arc would present actually the same appearance in either instance.* The clothing of a person under those circumstances coming either within the jumping zone or the actual contact would probably cause a spreading of the arc, particularly if he had very moist clothing, either perspiration or otherwise; or if he had large metallic buckles on his back in suspenders, and that spreading would be practically the same, whether it was a contact case or a jump case. *If a person, for instance, came into actual contact with that wire at a point in his back to the right of the spinal column and under the right shoulder blade, practically at that point, and there received his first burn; and in dropping were to fall somewhat in the manner you are indicating, so that the wire would run up along the back, and to*



*the shoulder, it might produce the effect that was described by me to counsel in his question, as to the several different electrical burns."*

It appears, therefore, that the bubble did not indicate that the current jumped any more than it indicated actual contact. The bubble would have been formed in either event. Consequently no particular significance can be attached to the bubble. It could prove one thing as well as the other and the probabilities were not in favor of either as against the other.

Neither did the nature and location of the injuries tend to show in the slightest degree whether the current jumped or whether there was actual contact (Record, Vol. II, p. 306, ff. 106-107). The defendant in error was about six feet six inches tall. He had been engaged in heavy manual labor and was perspiring freely, his skin and shirt being therefore more or less salty. Salt water furnishes a good conductor for electricity (Record, Vol. II, p. 320, f. 142). Standing erect the end of the live arm would probably come into contact with defendant in error at about the base of his neck. He had deep scars at that point and on the top of his shoulder, as well as other burns farther down his back. If he came into actual contact with the live arm he of course immediately dropped limp and inert to the ground. Dropping would separate him from the live arm, thus drawing an arc which could be stretched for an indefinite distance and which could, according to the testimony, change its position on his person (Record, Vol. I,

p. 304, f. 102). Arcs of that character will move about, as shown by the testimony in relation to arcs formed when a lightning arrester is in operation. When a current of electricity jumps from a live to a dead arm of a lightning arrester an arc is formed, and as long as that arc persists or exists the current continues to flow through the arc. On account of the peculiar construction of a lightning arrester, however, the arc rises and elongates, finally breaking and thus stopping the flow of current after the surge is over. If plaintiff came into actual contact with the wire and then fell, such an arc could have been formed and could have changed its position on his person, in view of the fact that his skin and perspiration soaked shirt were probably at that time a good conductor.

On the other hand, if defendant in error had not touched the point of the live arm and had walked into a position where his shoulder was within one inch and three-quarters of it the electricity might have jumped to his body and thus formed an arc. Of course he would in that event immediately fall to the ground and the arc would naturally act in exactly the same manner as one formed by actual contact.

Therefore, it seems perfectly clear that the nature and location of the injuries cannot tend at all to show that the current jumped.

This view of the evidence is fortified by the location of the various scars on plaintiff's body. They were widely separated. Some were on his



neck and shoulder, others in the middle of the back, and still others in the lower part of the back. It would have been an impossibility for electricity to jump to his shoulder and also jump to the middle of his back and to the lower part thereof. This is true because to do so it would have to jump over a space of from a foot to two feet, and the evidence is uncontradicted that it could not jump more than an inch and three-quarters under the most favorable conditions here (Record, Vol. I, p. 295, f. 882).

The evidence amounts to a demonstration that after the first shock or charge the arc thus formed moved about on plaintiff's body but was finally broken by his fall to the ground, and that it could have moved about as well after actual contact as after leaping to plaintiff's body.

Of course it will not be disputed that the burden rested upon defendant in error to prove negligence and a causal connection between such negligence and his injury. The burden, under the court's interpretation of the complaint, rested upon defendant in error to show that the current *leaped* to him. *This burden is not sustained by showing that it either leaped or that there was actual contact.* The evidence to sustain the verdict must have tended to show one of these facts to the exclusion of the other, or must have weighed heavier in favor of one than the other. If upon a fair and impartial view of the evidence it tends to sustain one theory

to precisely the same extent as the other the case is not made out.

*Patton v. Texas etc. Co.*, 179 U. S. 658, 663, 664.

In the last analysis it would seem that the court, in deciding that the evidence was sufficient to show that the current leaped, relied upon the testimony of Scrugham as to the bubble. But the court's attention was probably not called to the other part of Scrugham's testimony wherein he stated that the bubble might indicate either the one thing or the other without preference to either.

Of course we realize that where injuries were sustained of such a fearful nature there must be a natural hesitation on the part of any court to set aside a verdict awarding damages. On the other hand, it must be remembered that the plaintiff in error is a small struggling concern, heavily in debt; that it paid Sheaff's expenses for months after the accident and offered to take him to California and have an operation performed which might have benefited him greatly; and that while accepting assistance from plaintiff in error, defendant in error already had his attorney engaged and was collecting evidence preparatory to filing suit.

In the light of these facts, while they have no influence upon the legal propositions involved, we feel that where the line between liability and non-liability is so finely drawn we should at least have an opportunity of regarding the case and demon-



strating to the court, if possible, that no legal liability has been made out.

---

### III.

#### **THE DEFENSE OF ASSUMPTION OF RISK IS ESTABLISHED BY THE UNCONTRADICTED EVIDENCE.**

Here again we are confronted with the same question, namely, the leaping of the current. The court freely admits that "there can be no doubt that he (Sheaff) knew better than to knowingly come in direct contact with a live wire or other conductor of electricity".

If, therefore, he did come into actual contact with a live wire he assumed the risk of so doing and cannot recover. The court clearly decides this defense upon the theory that there was no actual contact but that the current jumped to plaintiff's body. We have already endeavored to show (and we think successfully) that the evidence fails to prove that the current did leap any more than it establishes actual contact.

Assuming that it is sufficient to show either one or the other but neither to the exclusion of or in preference to the other, where does this leave us?

If it did leap, according to the court's conclusion the risk was not assumed. If there was actual contact the conclusion from the court's reasoning is irresistible that the risk was assumed. The evidence shows without conflict that there was either

a leaping or actual contact, but does not show which. The evidence also shows without conflict that if there was actual contact the plaintiff cannot recover. Therefore is not the plaintiff's case absolutely destroyed unless some tangible evidence can be pointed to in the record showing that there was a leaping of the current rather than an actual contact?

Let us assume that the evidence sufficiently shows either a leaping *or* actual contact. Let us also assume that this evidence, under the pleadings, considered apart from the defense of assumption of risk, would make a *prima facie* case of liability. Sheaff's experience and knowledge preclude his recovery, as against this defense, if there was actual contact. In other words, he assumed the dangers incident to actual contact. Therefore, upon the whole case, liability is not made out. The *prima facie* case is destroyed because the evidence fails to prove the leaping to the exclusion of actual contact.

As before shown, the complaint does not state a cause of action on the theory of actual contact because plaintiff was an electrician's helper and therefore an experienced man who needed no instruction or warning with reference to the danger of actual contact. The only theory upon which the plaintiff is enabled to be in court at all is that the complaint states a cause of action by reason of the leaping propensity of electricity.



If, therefore, the evidence fails to establish that the current leaped, but is just as strong to the point that there was actual contact, the evidence taken as a whole must be held to sustain the defense of assumption of risk.

---

#### IV.

#### **THE EVIDENCE SHOWS THAT DEFENDANT IN ERROR WAS GUILTY OF CONTRIBUTORY NEGLIGENCE AS MATTER OF LAW.**

Once more we are confronted with the same question of a leaping current of electricity. There is no escaping the conclusion that if Sheaff actually touched the live arm of the lightning arrester he was guilty of contributory negligence. He is held guiltless of contributory negligence because of the court's opinion that the electricity jumped, and that there was no actual contact.

The court says:

“It is true that a danger sign was posted on the door of the transformer building and it seems that a similar notice was posted on a post of the structure, but it is not pretended that either sign contained any notice that there was any danger of the current of electricity jumping from a live wire to a person only passing, or even if very close. There is nothing in the evidence indicating that the plaintiff voluntarily or even carelessly came into contact with either of the live arms; on the contrary, the bubble shown by the evidence on the lower end of the arm from which the plaintiff received the shock indicates that the current leaped to him, and as said by the trial court,

the nature and location of the injuries on the plaintiff's person, as shown by the evidence, tended to corroborate that theory."

Thus it appears that the conclusion of the court that defendant in error was not guilty of contributory negligence is based upon the proposition that there was no sign notifying plaintiff that electricity would jump, that there was no evidence of actual contact, and that the bubble, corroborated by the nature and location of the injuries, showed that the electricity did jump.

We shall not repeat what has already been said of the evidence on these subjects. We think the discussion already had shows clearly that the court was in error in holding that the evidence was sufficient to show that the current leaped to Sheaff's body.

If we are correct in that conclusion of course the defense of contributory negligence is completely established.

*But we feel that it is established even though the electricity did leap.* It appears without conflict that Sheaff had to take down the wires of the enclosure in order to get to the lightning arrester. When doing this he was confronted with the sign reading, "DANGER—HIGH VOLTAGE—KEEP OUT." That was a warning to him that the enclosure was a place of danger. He went to the dead side of the lightning arrester—a perfectly safe place—and dug the three holes for the cement blocks. Upon completing this work he could have



left the enclosure by the same route he entered it without being within several feet of either of the live arms. The connection between the live arms and the high tension wires overhead was in plain sight. Sheaff was an electrician's helper and must be presumed to have known at least some of the dangers of electricity. He knew the current was entering the transformer station through the high tension wires overhead because he admits hearing the purring of the transformers and recognized the sound. He knew the purring sound indicated that the electricity was passing through the transformers. The purring sound could be heard in the enclosure where the accident happened. At the very place where the accident happened Sheaff was only a few feet from the purring transformers. When he dropped his shovel after finishing the third hole, instead of leaving by the same route he entered he wandered over toward the substation with the idea of going between the ends of the live arms of the lightning arrester and the substation, a distance of only three or four feet. When he lost consciousness he was still several feet from the live arm where the bubble subsequently appeared. *He admits that he wandered toward the substation without thinking. His wandering must have taken him within one inch and three-quarters of the bubble. If he had remained two inches away from the bubble the electricity could not have leaped and he would not have been injured.*

The question is, therefore, whether or not it is contributory negligence for an electrician's helper who knows the danger of contact with live wires, to unnecessarily and without thinking place his body within one inch and three-quarters of a wire which he knows to be hot. Every one will admit that such a close approach to a known danger is of itself not only carelessness, but foolhardiness. A slight swaying of the body would cause actual contact because the space to cover would be less than an inch and three-quarters.

To recur for a moment to our skating and wading illustration: On the thin ice there is a sign reading, "DANGER—KEEP OFF." The skater ignores this sign because the ice is "innocent in appearance." It breaks and he attempts to excuse his foolhardiness by saying that the danger sign was not sufficiently explicit—that it should have said "Thin Ice".

At the point where the water was deep there was a danger sign. Ignoring this, the unfortunate woman walked into the hole and was drowned. Could her action be excused or justified by saying that the danger sign should have added the explanation, "Deep Water"?

This, it appears to us, with all due respect, is the logical effect of the reasoning of the court. Referring to the danger sign the court says: "It is not pretended that either sign contained any notice that there was any danger of the current of elec-



tricity jumping from a live wire to a person only passing or even if very close.”

The danger sign did say, however, “DANGER—HIGH VOLTAGE—KEEP OUT”.

The decision forces the conclusion that this specific sign did not give sufficient warning that the enclosure was a *danger zone* but that, on the contrary, it should have added the information “Keep away from wires—electricity will jump”.

Frankly and with the highest deference we are forced to say that we do not consider this a just or reasonable doctrine and believe that it has not the sanction of a single adjudication of any federal or state court.

If Sheaff were not negligent in voluntarily placing himself within an inch and three-quarters of the end of the live arm he would not have been negligent in going within a half or a quarter of an inch of it. In fact, he would not have been negligent no matter how close he got so long as there was not an actual touching.

We cannot believe that this is the law. Everyone, whether skilled in electricity or not, is presumed to know something of its dangers. No one of average intelligence will be permitted to deny such knowledge. The duty devolves on such a person not only to avoid actual contact with electric wires but to keep a reasonably safe distance away from them, so that accident or inadvertence will not throw him into actual contact. If Sheaff had left

as he had entered the enclosure, if he had looked about him instead of wandering into a dangerous position without thinking, if he had even exercised sufficient care to remain *two inches* from the live arm he would never have been injured.

We feel, therefore, that the defense of contributory negligence is made out even though the court should hold that the electricity jumped an inch and three-quarters. An inch and three-quarters is not far enough for an electrician's helper, exercising ordinary care for his own safety, to keep away from a wire which he has good reason to know is hot and which he has no occasion to be near. Even though he had not been an electrician's helper we think that as a man of ordinary intelligence he should be charged with the duty of keeping farther away from such a wire than an inch and three-quarters.

From what has been said it must be quite apparent that the mistake of the court as to the distance electricity will leap under such circumstances becomes vital in deciding this question. The court said that electricity would leap *at least* an inch and three-quarters. This undoubtedly means that it might leap a much greater distance. The court evidently thought that it would leap a considerable distance. When, however, it appears that it would only leap an inch and three-quarters it seems to us that the case takes on an entirely different aspect, so different, indeed, as to require reargument.



In conclusion we only desire to add that in briefing the case we did not consider it of much importance whether the current leaped or whether there was actual contact. We considered and still consider that it was just as much negligence on the part of defendant in error to voluntarily place himself within an inch and three-quarters of the live arm as to actually come in contact with it, because of the extreme danger of accidental contact from such close proximity.

However, as the distinction between a leaping current and actual contact has been made so prominent in the decision, and as we are entitled to indulge the inference that if there had been actual contact the judgment would have been reversed, we feel that justice to the plaintiff in error requires that an opportunity for a full reargument should be granted.

Plaintiff in error, therefore, respectfully asks that a rehearing be granted, and that the cause be placed upon the calendar for further consideration.

Dated, San Francisco,  
September 11, 1916.

Respectfully submitted,

WM M. ABBOTT,  
WM. M. CANNON,  
METSON, DREW & MACKENZIE,  
GEO. A. BARTLETT,

*Attorneys for Plaintiff in Error  
and Petitioner.*

## CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for plaintiff in error and petitioner in the above entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition is not interposed for delay.

WM. M. CANNON,  
*Of Counsel for Plaintiff in Error  
and Petitioner.*





















